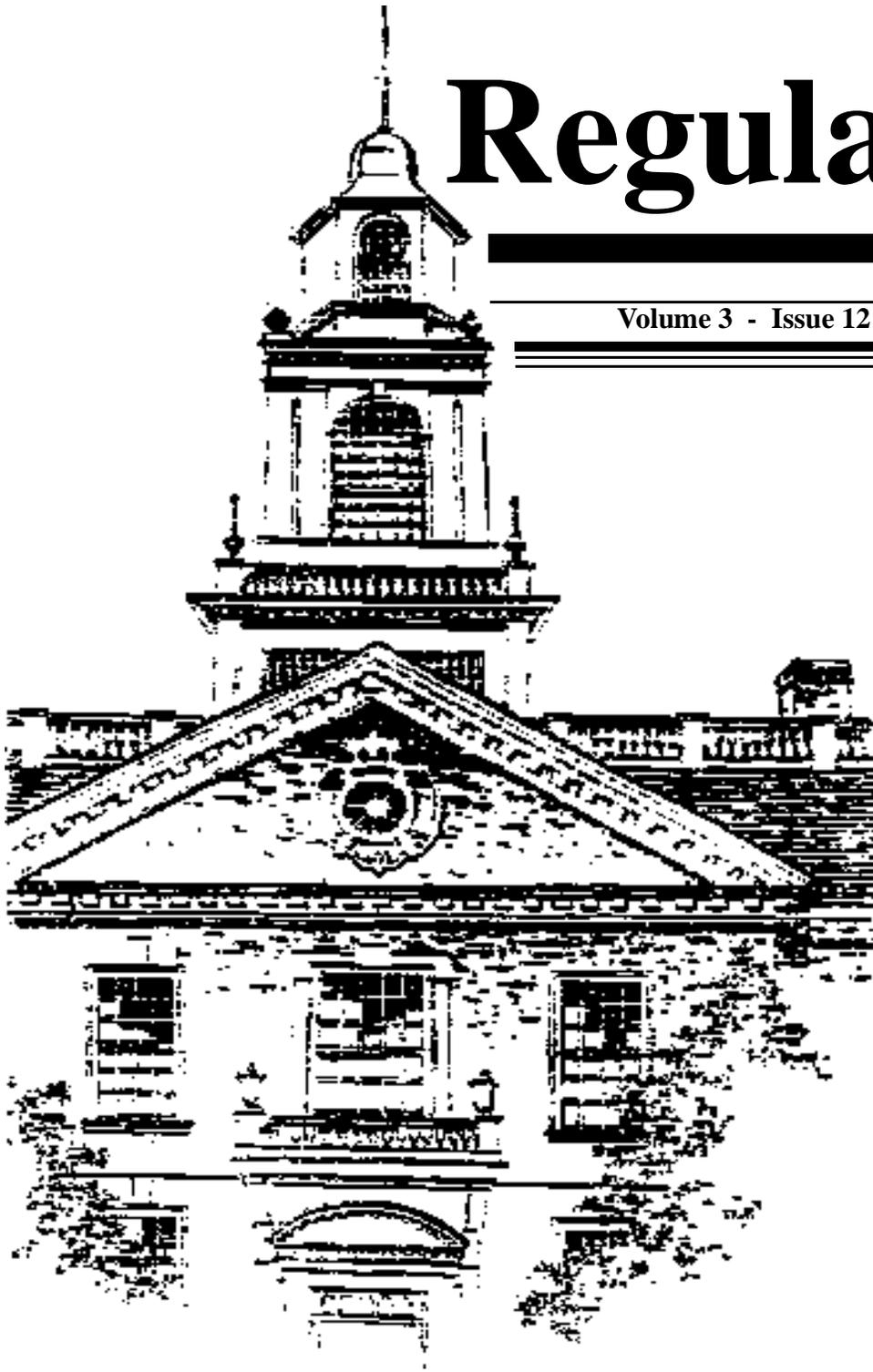

Delaware Register of Regulations



Issue Date: June 1, 2000

Volume 3 - Issue 12

Pages 1590 - 1764

IN THIS ISSUE:

Regulations:

Proposed

Final

Governor

Appointments

General Notices

Calendar of Events &

Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before May 15, 2000.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

1591

DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

3 DE Reg. 737 - 742 (12/1/99)

Refers to Volume 3, pages 737 - 742 of the Delaware Register issued on December 1, 1999.

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The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section,

no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.

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TABLE OF CONTENTS

1593

Cumulative Tables..... 1595

DEPARTMENT OF AGRICULTURE

Delaware Pesticide Rules & Regulations..... 1693

PROPOSED

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Nursing..... 1605
Board of Podiatry..... 1638
Real Estate Commission..... 1648
Gaming Control Board, Regulation 1.03(10),
Bingo Licenses..... 1654

DEPARTMENT OF EDUCATION

Content Standards..... 1656
Bilingual Teacher (Spanish) Primary/Middle
Level & Bilingual Teacher (Spanish)
Secondary..... 1657
Supportive Instruction (Homebound)..... 1661

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Technical Memo. 2000-02, Duty to Report
Sales of Cigarette Products made by
Non Participating Manufacturers..... 1663

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

Reg. No. 30, Title V State Operating Permits
Program..... 1667

FINAL

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Accountancy..... 1668
Board of Clinical Social Work Examiners..... 1680
Board of Licensed Professional Geologists..... 1687
Gaming Control Board, Regulation 1.03(10),
Bingo Licenses..... 1692

DEPARTMENT OF EDUCATION

Children with Disabilities..... 1709

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Delaware Prescription Assistance Program
(DPAP)..... 1737

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF FISH AND WILDLIFE

Wildlife Regulations,
WR-1, Definitions..... 1739
WR-4, Seasons..... 1740
WR-6, Game Preserves..... 1742
WR-14, Falconry..... 1742
WR-15, Collection or Sale of Native Wildlife 1743
WR-16, Endangered Species..... 1744
Non-Tidal Finfish Regulations, NT-2, Bag Limits
and Seasons..... 1745

DEPARTMENT OF PUBLIC SAFETY DIVISION OF MOTOR VEHICLE

Policy Regulation No. 45, Concerning Driver
Improvement Problem Driver Program..... 1746
Policy Regulation Number 90, Concerning
Aggressive Drivers..... 1749

GOVERNOR

Appointments..... 1753

GENERAL NOTICES

**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Case-by-Case Nitrogen Oxides (NOX),
Reasonably Available Control Technology
(RACT) Determinations..... 1755

**CALENDAR OF EVENTS/HEARING
NOTICES**

Board of Nursing, Notice of Public Hearing..... 1762
Board of Podiatry, Notice of Public Hearing..... 1762
Real Estate Commission, Notice of Public
Hearing..... 1762
Gaming Control Board, Notice of Public Hearing
and Public Comment Period..... 1763
State Board of Education, Notice of Monthly
Meeting 1763
Div. of Revenue, Technical Memo. 2000-02,
Notice of Public Comment Period..... 1763
DNREC, Reg. No. 30, Title V State Operating Permits
Program, Notice of Public Hearing..... 1763
DNREC, Case-by-Case NOX RACT Determinations
Notice of Public Hearing..... 1763
Delaware River Basin Commission, Notice of
Monthly Meeting..... 1764

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the Delaware Register of Regulations.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the Register in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

Attorney General

Opinion No. 99-IB01, Request for Clarification of Att. Gen. Op. 95-IB06
(January 27, 1995)..... 3 **DE Reg.** 967

Opinion No. 99-IB02, FOIA Complaint Against City of New Castle..... 3 **DE Reg.** 967

Opinion No. 99-IB03, FOIA Complaint Against Town of Bethany Beach..... 3 **DE Reg.** 968

Opinion No. 99-IB04, State Emergency Response Commission Legal Opinion 3 **DE Reg.** 969

Opinion No. 99-IB05, FOIA Complaint Against Town of Bethany Beach..... 3 **DE Reg.** 971

Opinion No. 99-IB06, Durational Residency Requirement for New Castle County Council 3 **DE Reg.** 972

Opinion No. 99-IB07, Whether Driving Under the Influence Offenses May Be Pardoned. 3 **DE Reg.** 973

Opinion No. 99-IB08, FOIA Complaint Against Christina School District..... 3 **DE Reg.** 974

Opinion No. 99-IB08, Constitutionality of 24 **Del.C.** §1341..... 3 **DE Reg.** 976

Opinion No. 99-IB10, Local Disenfranchisement of Delinquent Taxpayers 3 **DE Reg.** 981

Opinion No. 99-IB11, FOIA Complaint Against City of Newark..... 3 **DE Reg.** 984

Opinion No. 99-IB12, FOIA Complaint Against Brandywine School District 3 **DE Reg.** 985

Opinion No. 99-IB13, Dept. of Agriculture Regulations Enacted Pursuant to
16 **Del.C.** § 4757(e)..... 3 **DE Reg.** 985

Opinion No. 99-IB14, FOIA Complaint Against Town of Elsmere 3 **DE Reg.** 988

Delaware State Fire Prevention Commission

BLS Ambulance Provider/First Responder..... 3 **DE Reg.** 122 (Prop.)
3 **DE Reg.** 750 (Final)

Standard for the Marking, Identification and Accessibility of Fire Lanes,
Exits, Fire Hydrants, Sprinkler and Standpipe Connections 3 **DE Reg.** 97 (Final)

NFPA Fire Codes & Standards, Incorporation by Reference..... 3 **DE Reg.** 416 (Final)

Department of Administrative Services

Division of Professional Regulation

Board of Accountancy..... 3 **DE Reg.** 850 (Prop.)
3 **DE Reg.** 1121 (Prop.)
3 **DE Reg.** 1019 (Errata)

Board of Clinical Social Work Examiners..... 3 **DE Reg.** 1143 (Prop.)

Board of Cosmetology and Barbering..... 3 **DE Reg.** 573 (Prop.)
3 **DE Reg.** 1129 (Prop.)
3 **DE Reg.** 1197 (Final)

Board of Electrical Examiners..... 3 **DE Reg.** 522 (Final)
3 **DE Reg.** 1023 (Prop.)
3 **DE Reg.** 1368 (Final)

Board of Examiners of Nursing Home Administrators..... 3 **DE Reg.** 486 (Prop.)
3 **DE Reg.** 1060 (Final)

Board of Examiners in Optometry..... 3 **DE Reg.** 1428 (Prop.)

Board of Examiners of Psychologists..... 3 **DE Reg.** 576 (Prop.)
3 **DE Reg.** 1067 (Final)

Board of Funeral Services..... 3 **DE Reg.** 1308 (Prop.)

Board of Licensed Professional Geologists..... 3 **DE Reg.** 1313 (Prop.)

Board of Massage and Bodywork.....	3	DE Reg.	1032 (Prop.)
			3 DE Reg. 1516 (Final)
Board of Nursing.....	3	DE Reg.	690 (Prop.)
			3 DE Reg. 1373 (Final)
Board of Pharmacy			
Regulation I, Pharmacist, Licensure Requirements.....	3	DE Reg.	1133 (Prop.)
Regulation II, Grounds for Disciplinary Proceeding.....	3	DE Reg.	1133 (Prop.)
Regulation V, Dispensing.....	3	DE Reg.	1133 (Prop.)
Regulation V(A)(7) & V(D)(3)(c), Dispensing.....	3	DE Reg.	8 (Prop.)
			3 DE Reg. 43 (Final)
Regulation VI- D, Pure Drug Regulations.....	3	DE Reg.	8 (Prop.)
Regulation XIV - Administration of Injectable Medications.....	3	DE Reg.	8 (Prop.)
Delaware Gaming Board, Regulations Governing Bingo, Section 1.03(10).....	3	DE Reg.	1147 (Prop.)
Merit Employee Relations Board, Chapter 20, Grievance Procedure.....	3	DE Reg.	167 (Final)
Voluntary Treatment Option for Chemically Dependent or Impaired Professionals.....	3	DE Reg.	571 (Prop.)
Department of Agriculture			
Delaware Pesticide Rules and Regulations.....	3	DE Reg.	1035 (Prop.)
			3 DE Reg. 1322 (Prop.)
Farmland Preservation Program.....	3	DE Reg.	170 (Final)
Harness Racing Commission			
24 proposed amendments.....	3	DE Reg.	885 (Prop.)
			3 DE Reg. 1520 (Final)
Preference Dates, Chapter VII, Rule I-F.....	3	DE Reg.	432 (Final)
Overnight Events, Chapter VI, Rule II-A-5.....	3	DE Reg.	432 (Final)
Rules 3.2.8.3; 6.3.2; 7.6.6; 7.6.13; 7.6.14; 7.6.15; 8.3.5.4; and 8.4.3.5.10.....	3	DE Reg.	1433 (Prop.)
Thoroughbred Racing Commission			
30 rule amendments.....	3	DE Reg.	1439 (Prop.)
Appeals from Decisions of the Stewards, Rule 19.03(a).....	3	DE Reg.	885 (Prop.)
			3 DE Reg. 1541 (Final)
Bleeders, Rule 10.04.....	3	DE Reg.	360 (Prop.)
			3 DE Reg. 754 (Final)
Bleeder Medication, Rule 15.02.....	3	DE Reg.	360 (Prop.)
			3 DE Reg. 754 (Final)
Requests for Continuances must be Filed with the Administrator of Racing, Rule 19.06.....	3	DE Reg.	885 (Prop.)
			3 DE Reg. 1541 (Final)
Department of Education			
Accumulation of Annual Leave.....	3	DE Reg.	709 (Prop.)
			3 DE Reg. 1392 (Final)
Administrative and Supervisor Personnel, Repeal of.....	3	DE Reg.	1165 (Rep.)
Administrator Contracts.....	3	DE Reg.	709 (Prop.)
			3 DE Reg. 1077 (Final)
Career Guidance and Placement Counselors, Repeal of.....	3	DE Reg.	1174 (Rep.)
			3 DE Reg. 1547 (Final)
Certification for Speech Language Pathologist.....	3	DE Reg.	1344 (Prop.)
Child Nutrition	3	DE Reg.	10 (Prop.)
			3 DE Reg. 524 (Final)
Children with Disabilities.....	3	DE Reg.	886 (Prop.)
			3 DE Reg. 1151 (Prop.)
			3 DE Reg. 1551 (Final)
Content Standards, 500.1.....	3	DE Reg.	1052 (Prop.)
Credit for Experience for Administrators, Teachers and Secretaries.....	3	DE Reg.	1173 (Prop.)
			3 DE Reg. 1542 (Final)

CUMULATIVE TABLES

1597

Deferred Compensation	3	DE Reg.	363 (Rep.)
	3	DE Reg.	633 (Final)
Definitions, Public and Private Schools.....	3	DE Reg.	709 (Prop.)
Delaware Licensure for Teachers Holding National Board for Professional Teaching Standards Certification.....	3	DE Reg.	1149 (Prop.)
	3	DE Reg.	1545 (Final)
Delaware Student Testing Program.....	3	DE Reg.	687 (Errata)
Delayed Certification, Sub-Standard Certification, Provisional Certificate, Repeal of.....	3	DE Reg.	709 (Prop.)
	3	DE Reg.	1076 (Final)
DSSAA Constitution & Bylaws, 29 amendments.....	3	DE Reg.	435 (Final)
DSSAA Constitution & Bylaws, Rule 1 & 33.....	3	DE Reg.	11 (Prop.)
	3	DE Reg.	525 (Final)
DSSAA, Official Handbook.....	3	DE Reg.	1456 (Prop.)
Educational Programs for Students with Limited English Proficiency, 900.6.....	3	DE Reg.	900 (Prop.)
	3	DE Reg.	1054 (Prop.)
	3	DE Reg.	1341 (Prop.)
Employee Leave.....	3	DE Reg.	1077 (Final)
Health Examinations for School District Employees.....	3	DE Reg.	13 (Prop.)
	3	DE Reg.	526 (Final)
K-12 Comprehensive Health Education and Family Life Education Policy.....	3	DE Reg.	717 (Prop.)
	3	DE Reg.	1073 (Final)
K-12 Guidance Programs.....	3	DE Reg.	1175 (Prop.)
	3	DE Reg.	1546 (Final)
K-12 Guidance Programs, 500.13.....	3	DE Reg.	1053 (Prop.)
Maternity Leave, Repeal.....	3	DE Reg.	527 (Rep.)
Michael C. Ferguson Achievement Awards Scholarship Program.....	3	DE Reg.	1451 (Prop.)
Middle Level Certification in Mathematics and Science.....	3	DE Reg.	1455 (Prop.)
Military Leave, Credit for Service in the Armed Forces.....	3	DE Reg.	361 (Prop.)
	3	DE Reg.	630 (Final)
Payment of Personnel under Various Programs.....	3	DE Reg.	492 (Prop.)
	3	DE Reg.	755 (Final)
Payment Schedules for Contractual Programs/In-Service Education.....	3	DE Reg.	363 (Rep.)
	3	DE Reg.	633 (Final)
Payment of Teachers in Summer Programs in Vocational-Technical School Districts.....	3	DE Reg.	363 (Rep.)
	3	DE Reg.	633 (Final)
Permanent File of School Districts.....	3	DE Reg.	709 (Prop.)
Pre-referral of Enrolled Students for Special Education and/or Related Services, Repeal of	3	DE Reg.	903 (Rep.)
	3	DE Reg.	1549 (Final)
Professional Employees Strikes.....	3	DE Reg.	709 (Prop.)
	3	DE Reg.	1077 (Final)
Recruiting & Training of Professional Educators for Critical Curricular Areas.....	3	DE Reg.	100 (Final)
Regulation for Charter Schools - Admission, Repeal of.....	3	DE Reg.	492 (Rep.)
	3	DE Reg.	758 (Final)
School Crisis Response Plans.....	3	DE Reg.	434 (Final)
School Custodians.....	3	DE Reg.	1453 (Prop.)
School Food Service Employees.....	3	DE Reg.	1173 (Prop.)
	3	DE Reg.	1542 (Final)
School Health Tuberculosis (Tb) Control Program.....	3	DE Reg.	440 (Final)
School Safety Audit.....	3	DE Reg.	433 (Final)
School Transportation	3	DE Reg.	588 (Prop.)
	3	DE Reg.	942 (Final)
	3	DE Reg.	1548 (Final)
School Transportation Aides.....	3	DE Reg.	1150 (Prop.)

Services for Exceptional Children, Repeal.....	3	DE Reg.	903 (Rep.)
Sick Leave	3	DE Reg.	1549 (Final)
State Salary Increase Adjustments for Changed Status.....	3	DE Reg.	709 (Prop.)
Student Testing Program.....	3	DE Reg.	1392 (Final)
Substitutes	3	DE Reg.	363 (Rep.)
Supportive Instruction (Homebound).....	3	DE Reg.	633 (Final)
Teacher Work Day.....	3	DE Reg.	364 (Prop.)
Teacher of the Year Award.....	3	DE Reg.	582 (Prop.)
			1174 (Prop.)
			1542 (Final)
			1338 (Prop.)
			709 (Prop.)
			1077 (Final)
			104 (Final)
Department of Finance			
Administration of the Education Expense & Property Tax Relief Fund.....	3	DE Reg.	597 (Prop.)
Division of Revenue			
State Lottery Office			
Definition of Technology Provider, Regulation 2.0.....	3	DE Reg.	719 (Prop.)
			1081 (Final)
Licensing Process for Technology Providers, Regulations 4.1 and 4.2.....	3	DE Reg.	719 (Prop.)
			1082 (Final)
Non-Discrimination on the Basis of Disability in Delaware Lottery Programs, Rule 29	3	DE Reg.	600 (Prop.)
			951 (Final)
Payment of Prizes, Powerball Game, Rule 23.....	3	DE Reg.	126 (Prop.)
			523 (Final)
Requirements for Video Lottery Agent to File Financial Reports, Regulation 8.2.....	3	DE Reg.	720 (Prop.)
			1083 (Final)
Requirements for Video Lottery Agents to File Copies of all Video Lottery Related Contracts, Regulation 6.35.....	3	DE Reg.	720 (Prop.)
			1083 (Final)
Technology Provider Duties, Regulation 5.11.....	3	DE Reg.	720 (Prop.)
			1082 (Final)
Tax Appeal Board, Rules & Regulations.....	3	DE Reg.	905 (Prop.)
Department of Health & Social Services			
Division of Mental Retardation			
Eligibility Criteria.....	3	DE Reg.	1494 (Prop.)
Division of Public Health			
Conrad State 20 / J-1 Visa Waiver Program.....	3	DE Reg.	603 (Prop.)
			956 (Final)
Delaware Trauma System Rules & Regulations.....	3	DE Reg.	14 (Prop.)
			442 (Final)
Governing the Control of Communicable and other Disease Conditions Metabolic Disorders & Establishment of Case Review Committee, Regulations Defining	3	DE Reg.	1201 (Final)
			529 (Final)
State of Delaware Food Code.....	3	DE Reg.	495 (Prop.)
			1393 (Final)
			1422 (Errata)
Office of Drinking Water			
Regulations Governing Public Drinking Water Systems.....	3	DE Reg.	197 (Final)

Division of Social Services

1115 Demonstration Waiver.....	3	DE Reg.	916	(Prop.)
				3 DE Reg. 1218 (Final)
Delaware Prescription Assistance Program (DPAP).....	3	DE Reg.	1359	(Prop.)
DSSM 2023, Program Violations.....	3	DE Reg.	287	(Final)
DSSM 3002, Time Limit, Temporary Welfare Program.....	3	DE Reg.	369	(Prop.)
				3 DE Reg. 759 (Final)
DSSM 3002, Time Limit, Temporary Welfare Program, Withdraw of.....	3	DE Reg.	443	(Final)
DSSM 3002, Exceptions to the Time Limit Counter.....	3	DE Reg.	443	(Prop.)
DSSM 3031, Work for your Welfare.....	3	DE Reg.	371	(Prop.)
DSSM 3032, Diversion Assistance.....	3	DE Reg.	444	(Final)
DSSM 4006.1, Excluded Income.....	3	DE Reg.	1292	(Emer.)
DSSM 4006.1, Excluded Income.....	3	DE Reg.	1346	(Prop.)
DSSM 8030.1, Excluded Income.....	3	DE Reg.	1292	(Emer.)
DSSM 8030.1, Excluded Income.....	3	DE Reg.	1346	(Prop.)
DSSM 9059, Income Exclusions.....	3	DE Reg.	287	(Final)
DSSM 9059, Income Exclusions.....	3	DE Reg.	1292	(Emer.)
DSSM 9059, Income Exclusions.....	3	DE Reg.	1346	(Prop.)
DSSM 11003.7, Income Limits & Determination of Fees.....	3	DE Reg.	497	(Prop.)
				3 DE Reg. 762 (Final)
DSSM 11003.7.2, Income Limits & Determination of Fees	3	DE Reg.	497	(Prop.)
				3 DE Reg. 762 (Final)
DSSM 11003.7.7, Income Limits & Determination of Fees.....	3	DE Reg.	497	(Prop.)
				3 DE Reg. 762 (Final)
DSSM 11003.9.1, Countable Income.....	3	DE Reg.	1292	(Emer.)
DSSM 11003.9.1, Countable Income.....	3	DE Reg.	1346	(Prop.)
DSSM 11004.3, Income Limits & Determination of Fees.....	3	DE Reg.	497	(Prop.)
				3 DE Reg. 762 (Final)
DSSM 11004.7, Determination of Child Care Fee.....	3	DE Reg.	42	(Prop.)
				3 DE Reg. 444 (Final)
				3 DE Reg. 497 (Prop.)
				3 DE Reg. 762 (Final)
DSSM 11004.7.1, Income Limits & Determination of Fees.....	3	DE Reg.	497	(Prop.)
				3 DE Reg. 762 (Final)
DSSM 11004.7.11, Income Limits & Determination of Fees.....	3	DE Reg.	497	(Prop.)
				3 DE Reg. 762 (Final)
DSSM 13444, Qualified Medicare Beneficiaries (QMB).....	3	DE Reg.	616	(Prop.)
				3 DE Reg. 1084 (Final)
DSSM 13445, Specified Low Income Medicare Beneficiaries (SLMB).....	3	DE Reg.	616	(Prop.)
				3 DE Reg. 1084 (Final)
DSSM 13447, Qualifying Individuals	3	DE Reg.	616	(Prop.)
				3 DE Reg. 1084 (Final)
DSSM 14433.2, Eligibility for State Funded Benefits (Nonqualified Aliens).....	3	DE Reg.	634	(Final)
DSSM 14710, Income.....	3	DE Reg.	1292	(Emer.)
				3 DE Reg. 1346 (Prop.)
DSSM 15430, Adoption Subsidy Children.....	3	DE Reg.	616	(Prop.)
				3 DE Reg. 1085 (Final)
DSSM 17300, Qualified Medicare Beneficiaries	3	DE Reg.	616	(Prop.)
				3 DE Reg. 1084 (Final)
DSSM 17300.3.2.5, Unearned Income	3	DE Reg.	616	(Prop.)
				3 DE Reg. 1084 (Final)
DSSM 17300.3.3, Resources.....	3	DE Reg.	616	(Prop.)
				3 DE Reg. 1085 (Final)
DSSM 17300.3.3.1, Excluded Resources.....	3	DE Reg.	616	(Prop.)
				3 DE Reg. 1085 (Final)
DSSM 17700, Qualified Disabled and Working Individuals.....	3	DE Reg.	1058	(Prop.)
				3 DE Reg. 1565 (Final)

DSSM 17700.3 Financial Eligibility.....	3	DE Reg.	1058 (Prop.)
			3 DE Reg. 1565 (Final)
DSSM 17700.3.2 Resources.....	3	DE Reg.	1058 (Prop.)
			3 DE Reg. 1565 (Final)
DSSM 18700.5, Cancellation of Coverage for Nonpayment of Premiums.....	3	DE Reg.	617 (Prop.)
			3 DE Reg. 1085 (Final)
DSSM 20100, Long Term Care Introduction	3	DE Reg.	617 (Prop.)
DSSM 20700, Home and Community Based Services.....	3	DE Reg.	617 (Prop.)
Durable Medical Equipment Provider Manual.....	3	DE Reg.	1020 (Errata)
Durable Medical Equipment Provider Manual, Nutrition Therapy.....	3	DE Reg.	618 (Prop.)
			3 DE Reg. 958 (Final)
Eligibility Confirmation.....	3	DE Reg.	1360 (Prop.)
Eligibility Manual, 15400, Income.....	3	DE Reg.	107 (Final)
Eligibility Manual, 16240, Composition of Budget Unit.....	3	DE Reg.	107 (Final)
Eligibility Manual, A Better Chance, Delaware TANF Plan.....	3	DE Reg.	634 (Final)
General Policy Manual	3	DE Reg.	277 (Final)
General Policy Manual, Delaware Prescription Assistance Program (DPAP).....	3	DE Reg.	620 (Prop.)
			3 DE Reg. 1021 (Errata)
General Policy Manual, Eligibility for DHCP.....	3	DE Reg.	497 (Prop.)
			3 DE Reg. 776 (Final)
Guaranteed Eligibility.....	3	DE Reg.	1059 (Prop.)
			3 DE Reg. 1566 (Final)
Home Health Provider Manual, Assisted Living Medicaid Waiver Program.....	3	DE Reg.	374 (Prop.)
			3 DE Reg. 776 (Final)
Independent Laboratory Provider Manual.....	3	DE Reg.	127 (Prop.)
			3 DE Reg. 531 (Final)
Non-Emergency Medical Transportation Provider Policy.....	3	DE Reg.	914 (Prop.)
			3 DE Reg. 1218 (Final)
Pharmacy Provider Manual, Drug Rebate Programs	3	DE Reg.	620 (Prop.)
			3 DE Reg. 1022 (Errata)
Pharmacy Provider Manual, Drugs Used for Cosmetic Purposes.....	3	DE Reg.	375 (Prop.)
			3 DE Reg. 777 (Final)
Practitioner Provider Manual.....	3	DE Reg.	277 (Final)
Practitioner Provider Manual, Pharmacy Services.....	3	DE Reg.	620 (Prop.)
			3 DE Reg. 1022 (Errata)
Private Duty Nursing, HCBS Waiver and Assisted Living Manual.....	3	DE Reg.	278 (Final)
Department of Insurance			
Regulation 56, Life & Health Submissions Regarding Acquired Immunodeficiency Syndrome (AIDS).....	3	DE Reg.	288 (Final)
Regulation 82, Standards of Payment for Multiple Surgical Procedures.....	3	DE Reg.	636 (Final)
Regulation 83, Standards of Payment for Assistants at Surgery.....	3	DE Reg.	638 (Final)
Department of Justice			
Delaware Securities Act, Rules 700, 701.....	3	DE Reg.	1360 (Prop.)
Department of Labor			
Division of Employment & Training			
Apprenticeship & Training Rules & Regulations.....	3	DE Reg.	42 (Prop.)
			3 DE Reg. 641 (Final)
Department of Natural Resources & Environmental Control			
Division of Air & Waste Management			
Air Quality Management Section			
2002 Rate-of-Progress Plan for Kent & New Castle Counties.....	3	DE Reg.	65 (Prop.)
			3 DE Reg. 1236 (Final)

Delaware 1996 Periodic Ozone State Implementation Plan Emission	
Inventory for VOC, Nox, and CO.....	3 DE Reg. 722 (Prop.) 3 DE Reg. 843 (Errata) 3 DE Reg. 1220 (Final)
Delaware 1996 Milestone Demonstration for Kent and New Castle	
Counties.....	3 DE Reg. 729 (Prop.) 3 DE Reg. 1227 (Final)
Delaware On-Road Mobile Source Emissions Budgets for the Delaware,	
Phase II Attainment Demonstration.....	3 DE Reg. 127 (Prop.) 3 DE Reg. 778 (Final)
Reg. No. 3, Ambient Air Quality Standards.....	3 DE Reg. 621 (Prop.) 3 DE Reg. 959 (Final)
Reg. No. 36, Acid Rain Program.....	3 DE Reg. 376 (Prop.) 3 DE Reg. 779 (Final)
Reg. No. 37, NOx Budget Program.....	3 DE Reg. 51 (Prop.) 3 DE Reg. 445 (Final)
Reg. No. 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart A.....	3 DE Reg. 59 (Prop.) 3 DE Reg. 445 (Final)
Reg. No. 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart N.....	3 DE Reg. 129 (Prop.) 3 DE Reg. 532 (Final)
Reg. No. 39, NOx Budget Trading Program.....	3 DE Reg. 534 (Final) 3 DE Reg. 1362 (Prop.)
Reg. No. 40, Delaware's National Low Emissions Vehicle Program.....	
Waste Management Section	
Regulations Governing Hazardous Waste.....	
Division of Fish & Wildlife	
Non-Tidal Fishing Regulations	
Complete Revision.....	3 DE Reg. 289 (Final) 3 DE Reg. 748 (Prop.)
NT-2, Bag Limits & Seasons.....	
Shellfish Regulations	
S-51, Seasons and Area Closed to Taking Horseshoe Crabs.....	3 DE Reg. 1177 (Prop.) 3 DE Reg. 1565 (Final)
S-52, Requirement for Collecting Horseshoe Crabs for Persons Under 16.....	3 DE Reg. 622 (Prop.) 3 DE Reg. 1093 (Final)
S-53, Number of Persons Accompanying a Person with a Valid Horseshoe Crab Collecting Permit.....	3 DE Reg. 623 (Prop.) 3 DE Reg. 1093 (Final)
S-54, Possession Limit of Horseshoe Crabs, Exceptions.....	3 DE Reg. 623 (Prop.) 3 DE Reg. 1093 (Final) 3 DE Reg. 1177 (Prop.) 3 DE Reg. 1570 (Final)
S-55, Horseshoe Crab Dredging Restrictions.....	3 DE Reg. 1178 (Prop.) 3 DE Reg. 1570 (Final)
S-55A, Horseshoe Crab Dredge Permit Lottery.....	3 DE Reg. 652 (Final)
S-57, Horseshoe Crab Reporting Requirements.....	3 DE Reg. 1178 (Prop.) 3 DE Reg. 1571 (Final)
S-58, Horseshoe Crab Containment and Transportation Restrictions.....	3 DE Reg. 623 (Prop.) 3 DE Reg. 1094 (Final)
S-61, Collecting Horseshoe Crabs at Night, Prohibited.....	3 DE Reg. 623 (Prop.) 3 DE Reg. 1094 (Final)
Tidal Finfish Regulations	
Reg. No. 4, Summer Flounder Size Limits; Possession Limits Season.....	3 DE Reg. 737 (Prop.) 3 DE Reg. 1088 (Final)
Reg. No. 6, Striped Bass Limits; Recreational Fishing Seasons; Method of Take; Creel Limit; Possession Limit.....	3 DE Reg. 739 (Prop.)

Reg. No. 7, Striped Bass Possession Size Limit; Exceptions.....	3	DE Reg.	739 (Prop.)
	3	DE Reg.	1089 (Final)
	3	DE Reg.	1426 (Errata)
	3	DE Reg.	1306 (Emer.)
Reg. No. 10, Weakfish Size Limits; Possession Limits; Seasons.....	3	DE Reg.	740 (Prop.)
	3	DE Reg.	1090 (Final)
Reg. No. 23, Black Sea Bass Size Limits; Trip Limits; Seasons; Quotas.....	3	DE Reg.	740 (Prop.)
	3	DE Reg.	1090 (Final)
Reg. No. 25, Atlantic Sharks.....	3	DE Reg.	741 (Prop.)
	3	DE Reg.	1090 (Final)
Reg. No. 26, American Shad & Hickory Shad; Creel Limits.....	3	DE Reg.	742 (Prop.)
	3	DE Reg.	1092 (Final)
Wildlife Regulations			
WR-1, Definitions.....	3	DE Reg.	742 (Prop.)
WR-4 Seasons, Diamondback Terrapin.....	3	DE Reg.	742 (Prop.)
WR-6, Game Preserves.....	3	DE Reg.	745 (Prop.)
WR-14, Falconry.....	3	DE Reg.	745 (Prop.)
WR-15, Collection or Sale of Native Wildlife.....	3	DE Reg.	746 (Prop.)
WR-16, Endangered Species.....	3	DE Reg.	747 (Prop.)
Division of Water Resources			
Land Treatment of Wastes.....	3	DE Reg.	445 (Final)
Surface Water Quality Standards.....	3	DE Reg.	311 (Final)
Total Maximum Daily Load (TMDL) Regulation for zinc in the Red Clay Creek.....	3	DE Reg.	163 (Prop.)
	3	DE Reg.	806 (Final)
Total Maximum Daily Load (TMDL) Regulation for zinc in the White Clay Creek.....	3	DE Reg.	164 (Prop.)
	3	DE Reg.	650 (Final)
Department of Public Safety			
Board of Examiners of Private Investigators & Private Security Agencies			
Employment Notification.....	3	DE Reg.	1364 (Prop.)
Firearm's Policy.....	3	DE Reg.	960 (Final)
Personnel Rosters & Job Assignments.....	3	DE Reg.	961 (Final)
Uniforms, Patches, Badges, Seals, Vehicular Markings.....	3	DE Reg.	961 (Final)
Use of Animals.....	3	DE Reg.	963 (Final)
Division of Alcoholic Beverage Control			
Rule 76, A Rule Governing Taxes Paid On Spirits.....	3	DE Reg.	624 (Prop.)
Rule 77, A Rule Pertaining to the License of Direct Shippers.....	3	DE Reg.	1495 (Prop.)
Division of Motor Vehicles			
Policy Regulation Number 45 Concerning Driver Improvement			
Problem Driver Program.....	3	DE Reg.	1179 (Prop.)
Policy Regulation Number 90 Concerning Aggressive Drivers.....	3	DE Reg.	1182 (Prop.)
Department of State			
Office of the State Banking Commissioner			
Regulation No.: 5.1101etal.0002, Instructions for Preparation of			
Franchise Tax.....	3	DE Reg.	512 (Prop.)
	3	DE Reg.	810 (Final)
Regulation No.: 5.1101etal.0005, Instructions for Preparation of			
Franchise Tax for Federal Savings Banks not Headquartered in this State but Maintaining Branches in this State.....	3	DE Reg.	515 (Prop.)
	3	DE Reg.	812 (Final)

Regulation No.: 5.1101etal.0009, Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks.....		3	DE Reg.	517 (Prop.)
		3	DE Reg.	815 (Final)
Regulation No.: 5.2112.0001, Mortgage Loan Brokers Operating Regulations.....		3	DE Reg.	403 (Prop.)
		3	DE Reg.	654 (Final)
Regulation No.: 5.2111(a).0002, Mortgage Loan Brokers Minimum Requirements for Content of Books & Records.....		3	DE Reg.	404 (Prop.)
		3	DE Reg.	655 (Final)
Regulation No. 5.2115.0003, Mortgage Loan Broker Regulations Itemized Schedule of Charges.....		3	DE Reg.	405 (Prop.)
		3	DE Reg.	656 (Final)
Regulation No.: 5.2113.0004, Mortgage Loan Brokers Minimum Disclosure Requirements		3	DE Reg.	406 (Prop.)
		3	DE Reg.	657 (Final)
Regulation No.: 5.2111(b).0005, Report of Delaware Loan Volume.....		3	DE Reg.	406 (Prop.)
		3	DE Reg.	657 (Final)
Regulation No.: 5.2213.0002, Licensed Lenders Minimum Requirements for Content of Books & Records.....		3	DE Reg.	407 (Prop.)
		3	DE Reg.	658 (Final)
Regulation No. 5.2218/2231.0003, Licensed Lenders Regulations Itemized Schedule of Charges.....		3	DE Reg.	408 (Prop.)
		3	DE Reg.	659 (Final)
Regulation No.: 5.2210(e).0005, Report of Delaware Loan Volume.....		3	DE Reg.	411 (Prop.)
		3	DE Reg.	662 (Final)
Regulation No.: 5.2318.0001, Report of Delaware Sale of Checks, Drafts & Money Orders Volume.....		3	DE Reg.	411 (Prop.)
		3	DE Reg.	662 (Final)
Regulation No.: 5.2906(e)/122(b).0001, Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books & Records.....		3	DE Reg.	412 (Prop.)
		3	DE Reg.	663 (Final)
Regulation No.: 5.2906(e).0002, Motor Vehicle Sales Finance Companies Operating Regulations.....		3	DE Reg.	413 (Prop.)
		3	DE Reg.	664 (Final)
Regulation No.: 5.2906(e).0003, Report of Delaware Loan Volume Motor Vehicle Installment Contracts.....		3	DE Reg.	414 (Prop.)
		3	DE Reg.	665 (Final)
Regulation No.: 5.3404/3409.0001, Preneed Funeral Contracts Regulations Governing Revocable & Irrevocable Trust Agreements.....		3	DE Reg.	415 (Prop.)
		3	DE Reg.	666 (Final)
Department of Transportation				
Statewide Access Management Policy & Statewide Classification Maps.....		3	DE Reg.	916 (Prop.)
Subdivision Streets, Mobility Friendly Design Standards.....		3	DE Reg.	624 (Prop.)
		3	DE Reg.	1571 (Final)
Governor's Office				
Appointments & Nominations.....		3	DE Reg.	111
		3	DE Reg.	341
		3	DE Reg.	457
		3	DE Reg.	552
		3	DE Reg.	669
		3	DE Reg.	820
		3	DE Reg.	966
		3	DE Reg.	1099
		3	DE Reg.	1270
		3	DE Reg.	1401
		3	DE Reg.	1584

Executive Order No. 61, Declaration of Drought Warning; Extending Voluntary Water Conservation Measures; and Other Related Items.....	3	DE Reg.	453
Executive Order No. 62, Proclamation of State of Emergency Due to Drought Emergency; Issuing an Emergency Order Imposing Mandatory Related Action.....	3	DE Reg.	454
Executive Order No. 63, Amendment to Executive Order No. 62 Regarding the State of Emergency due to Drought Emergency.....	3	DE Reg.	546
Executive Order No. 64, Amendment to Executive Order No. 62, as Amended by Executive Order No. 63, Regarding the State of Emergency due to Drought Emergency	3	DE Reg.	546
Executive Order No. 65, Amendment to Executive Order No. 62, as Amended by Executive Order No. 63 and Executive Order No. 64; Regarding the State of Emergency due to Drought Emergency.....	3	DE Reg.	547
Executive Order No. 66, Termination of State of Emergency Due to Drought; Repeal of Mandatory Water Conservation Measures; Declaration of Drought Warning; Extending Voluntary Water Conservation Measures; and Other Related Action.....	3	DE Reg.	550
Executive Order No. 67, Proclamation of State of Emergency Due to Hurricane.....	3	DE Reg.	667
Executive Order No. 68, Termination of Drought Warning and Other Related Action.....	3	DE Reg.	667
Executive Order No. 69, Amendment to Executive Order No.27 as Amended by Executive Order No. 56 Regarding the Creation of the Violence Against Women Act Implementation Committee.....	3	DE Reg.	668
Executive Order No. 70, Amendment to Executive Order No. 27 Regarding the Violence Against Women Act Implementation Committee.....	3	DE Reg.	964
Executive Order No. 71, Creating the Governor's Building and Trade Council.....	3	DE Reg.	964
Executive Order No. 72, State Employees and the Right to Organization and Effective Union Representation.....	3	DE Reg.	1095
Executive Order No. 73, Reallocation of State Private Activity Bond Volume Cap for Calendar Year 1999 and Initial Suballocation of State Private Activity Bond Volume Cap for Calendar Year 2000.....	3	DE Reg.	1095
Executive Order No. 74, Implementation of the Recommendations of the Water Supply Task Force; Appointment of Temporary Water Coordinator; Establishment of a Water Supply Coordinating Council.....	3	DE Reg.	1096
Executive Order No. 75, Establishment of the Workforce Investment Board.....	3	DE Reg.	1267
Executive Order No. 76, Amendment to Exec. Order No. 36 Regarding State Employee Obligations & Compensation During Emergencies.....	3	DE Reg.	1268
Executive Order No. 77, Creating the Electronic Government Steering Committee.....	3	DE Reg.	1398
Executive Order No. 78, Establishing Temporary Goals for State Agencies in Awarding Public Works Contracts & Making Changes to the Membership of the Building & Trade Council.....	3	DE Reg.	1399

Public Service Commission

Reg. Docket No. 4, Establishing the Minimum Filing Requirements for all Regulated Companies Subject to the Jurisdiction of the Public Service Commission.....	3	DE Reg.	1185 (Prop.)
			3 DE Reg. 1579 (Final)
Reg. Docket No. 10, Interim Rules Governing Competition in the Market for Local Telecommunications Services, Repeal of.....	3	DE Reg.	1496 (Prop.)
Reg. Docket No. 45, Rules for the Provision of Competitive Intrastate Telecommunications Services, Repeal of.....	3	DE Reg.	1496 (Prop.)
Reg. Docket No. 49, Creation of a Competitive Market for Retail Electric Supply Service.....	3	DE Reg.	538 (Final)
Rules for the Provision of Telecommunications Services.....	3	DE Reg.	1496 (Prop.)

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 Del.C. §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

Statutory Authority: 24 Delaware Code,
Section 1906(19) (24 Del.C. 1906(19))

The Delaware Joint Practice Committee in accordance with 24 Del.C. Subsection 1906(19) has proposed to revise the Rules and Regulations governing Independent Practice/Prescriptive Authority for Advanced Practice Nurses (APN).

The proposed changes that mandate completion of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty and advanced patho-physiology, in addition to advanced pharmacology/pharmacotherapeutics mirror recently established national standards for advanced practice nurses who prescribe. In addition, proposed language has been added that differentiates between the APN who has never had prescriptive authority and one who has had the authority in another state. The proposed revision decreases continuing the pharmacology education requirement from fifteen to ten contact hours per two years to mirror the national standard.

A public hearing will be held on Wednesday, July 5, 2000 at 5:30 p.m. in the Conference Center at Delaware Technical and Community College, Stanton Campus, 400 Christiana-Stanton Road, Newark, Delaware.

Anyone desiring a copy of the proposed revised section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover, DE 19904, (302) 739-4522,

ext. 215 or 216. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will July 5, 2000.

*** PLEASE NOTE: THE FOLLOWING REGULATIONS HAVE BEEN RENUMBERED TO REFLECT THE DELAWARE ADMINISTRATIVE CODE NUMBERING SYSTEM.**

- 1.0 General Provisions for the Operation of the Board of Nursing
- 2.0 Nursing Education Programs
- 3.0 Nursing Refresher Courses
- 4.0 Alternate Supervised Practice Plan for Nurses Inactive in Practice Five or More Years if No Refresher Course is Available
- 5.0 Guidelines for Courses Related to Assistance with Medications
- 6.0 Requirements and Procedures for Licensure
- 7.0 Standards of Nursing Practice
- 8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware
- 9.0 Rules and Regulations Pertaining to Mandatory Continuing Education
- 10.0 Disciplinary Proceedings
- 11.0 Public Records
- 12.0 Advisory Committees
- 13.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 General Provisions for the Operation of the Delaware Board of Nursing

These Rules and Regulations are adopted by the Delaware Board of Nursing by authority of the Delaware Nurse Practice Act, 24 Del.C. §1906(1).

1.1 Officers

The officers of the Board shall be the President and the Vice-President to be elected each year during the month of June and to assume their duties as of July 1.

1.1.1 The President of the Board shall:

1.1.1.1 Chair all regular and disciplinary hearings of the Board;

1.1.1.2 Represent the Board at the National Council of State Boards of Nursing (NCSBN) Delegate Assembly as a voting delegate, certain professional and/or community functions, and regional or national meetings, or shall designate a member or the Executive Director to represent the Board;

1.1.1.3 Sign all correspondence conveying rulings of the Board to nursing service agencies and educational institutions;

1.1.1.4 Execute those functions delegated to the President elsewhere in these rules and regulations, or otherwise by law;

1.1.1.5 Review the agenda for the Board meeting with the Executive Director prior to distribution.

1.1.2 The Vice-President of the Board shall:

1.1.2.1 Chair meetings and hearings in the absence of the President;

1.1.2.2 Execute those functions delegated to the Vice-President elsewhere in these rules and regulations, or otherwise by law;

1.1.2.3 Represent the Board at the NCSBN Delegate Assembly, and other meetings as delegated by the President or the Board, as a voting delegate.

1.1.3 Filling Vacancies:

1.1.3.1 In the event of a resignation, termination or departure of one of the officers, a replacement shall be elected at the next Board meeting or at a meeting called for that purpose. A quorum of the Board is required.

1.1.3.2 In the event one of the officers shall not be available to fulfill their duties for a period not exceeding three months, the Board shall nominate one of its members to serve for the interim period.

1.2 Members

1.2.1 All members appointed to the Board share the responsibility vested in the Board. The President of the Board shall consider qualifications and educational preparation in delegating certain duties to individual members of the Board.

1.2.2 Board members in executive session may review drafts of National Council Licensure Examination questions for Registered Nurses and Licensed Practical Nurses.

1.2.3 Two Board members, one a Registered Nurse and one a Licensed Practical Nurse, shall be chosen as alternate voting delegates to the NCSBN Delegate Assembly if one of the voting delegates can not attend.

1.2.4 The members of the Board shall attend all scheduled Board business meetings. If there are extenuating circumstances which prevent a member from attending all or part of a scheduled meeting, the Executive Director should be informed in writing, if time permits, or by telephone, in advance of the meeting.

1.2.5 All members are expected to be aware of and follow their obligations under the State Employees', Officers' and Officials' Code of Conduct.

1.3 Duties of the Executive Director

1.3.1 The Division of Professional Regulation prescribes the duties of the Executive Director. See 29 Del.C. §8810(a).

1.4 Meetings

1.4.1 The Board of Nursing shall meet as often as necessary to transact the regular business of the Board.

1.4.2 Special meetings may be called at the request of the president or any two Board members.

1.4.3 An agenda shall be mailed to Board members prior to each meeting and notice of each meeting shall be given in accordance with the Freedom of Information Act.

1.4.4 The order of business for all regular meetings shall be:

- 1.4.4.1 Call to Order
- 1.4.4.2 Disposition of Minutes
- 1.4.4.3 Adoption of the Agenda
- 1.4.4.4 Activities Report
- 1.4.4.5 Unfinished Business
- 1.4.4.6 Committee Reports
- 1.4.4.7 President's Report
- 1.4.4.8 Executive Director's Report
- 1.4.4.9 Licensee Applicant Reviews
- 1.4.4.10 Licensee Reviews
- 1.4.4.11 Other Business
- 1.4.4.12 Licensee Approval
- 1.4.4.13 Next Meeting
- 1.4.4.14 Public Comment
- 1.4.4.15 Adjournment

1.4.5 Hearings shall be included in 1.4.4.10 for information purposes.

1.5 Requests for Meeting with the Board

1.5.1 The Board shall meet, upon request, with any group. The group asking for a meeting shall be asked to submit, in advance, items of interest for the agenda and shall receive a copy of the minutes. A request for a meeting shall be honored at the earliest convenience of the Board.

2.0 Nursing Education Programs**2.1 Definitions**

“Board” - the Delaware Board of Nursing.

“Conditional Approval” - the status granted to a program that is determined to be deficient in a specified area. When this determination is made by the Board, written notice shall be sent to the program specifying the deficient areas, and the time limit within which the deficiencies are to be corrected.

“Full Approval” - the status granted to a program that meets the requirements of the Law and the Rules and Regulations of the Board. Continuation of full approval is contingent upon annual review of the program and continuing to meet the criteria.

“Initial Approval” - authorization to admit students and enter into contractual agreements for clinical facilities. It is granted only after an application has been submitted, reviewed and a survey visit made by the Board. No students shall be admitted to the program until the institution has received written notification that initial approval has been granted. Failure to comply will delay initial approval.

“National Accrediting Agency For Nursing Education” - a national accrediting agency for nursing education that is recognized by the Council on Postsecondary Accreditation and by the U.S. Department of Education.

See 1 DE Reg 1879 (6/1/98)

“Nursing education program” - as defined in 24 Del.C. Ch. 19.

2.2 Authority Designated to Board of Nursing

2.2.1 In accordance with 24 Del.C. Ch. 19, the Board may:

2.2.1.1 Approve curricula and develop criteria and standards for evaluating nursing education programs;

2.2.1.2 Provide for surveys of such programs at such time as it may deem necessary;

2.2.1.3 Approve such programs to meet the requirements of the Chapter and of the Board; and

2.2.1.4 Deny or withdraw approval from nursing education programs for failure to meet prescribed curriculum or other standards. (Subsections 1906 (b), (c), (e)).

2.3 Purposes of Approval

2.3.1 The state requires that nursing education programs be approved in order to:

2.3.1.1 Provide for the safe practice of nursing by setting minimum requirements for the programs that prepare the licensee.

2.3.1.2 Encourage self-evaluation for the improvement of a nursing education program.

2.3.1.3 Provide for the public a list of nursing education programs that meet the requirements set by the Board.

2.3.1.4 Assure the graduates of approved nursing programs of their eligibility to apply for admission

to the licensing examination and to facilitate their licensure by endorsement in other states.

2.4 Procedure for Establishing a Nursing Education Program

2.4.1 Phase I

2.4.1.1 An administrative officer of the institution shall complete the appropriate application form and forward three copies to the Executive Director of the Board at least 12 months prior to enrollment of students.

2.4.1.2 The Board shall review the application and conduct a site visit. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

2.4.1.2.1 Alternatively, the institution desiring to establish a nursing education program may elect to have the site visit made by a Board member(s) and a nursing education consultant, the latter with special expertise in the same type of nursing education as the program. The consultant shall be from a list of qualified persons approved by the Board. Costs associated with the visit of the consultant shall be borne by the nursing education program requesting same.

2.4.1.3 The purpose of the site visit is to validate the information recorded on the application.

2.4.1.4 The site visitation team shall make a written report to the Board.

2.4.1.5 The Board shall report to the institution within 90 days after all requirements of Phase I have been met.

2.4.2 Phase II

2.4.2.1 The institution shall notify the Board of the appointment of a qualified nurse as director of the program at least nine months in advance of the anticipated enrollment of students in nursing courses.

2.4.2.2 The director shall be responsible for planning the program and providing the information required in Part II of the application form, which must be resubmitted at least three months prior to the anticipated enrollment of students.

2.4.2.3 The Board shall review the application and supporting information at a regularly scheduled meeting and determine if the program is prepared to admit students. If it is so determined, initial approval will be granted.

2.4.3 Phase III

2.4.3.1 Following initial approval, the director of the program shall submit five copies of a progress report to the Board every six months. This shall be a general report of progress to date to include number of students enrolled, attrition rate, faculty credentials, curriculum design, and use of clinical facilities. After the admission of students, these reports shall continue to be submitted at six month intervals until discontinued by the Board.

2.4.3.2 The institution shall appoint other

qualified nurse faculty members no less than four months in advance of enrollment of students in nursing courses to participate in determining the theoretical framework and in developing the curriculum plan and course content.

2.4.3.2.1 The program shall be developed according to criteria in accordance with 2.5 of these Regulations. The curriculum plan, including course descriptions, shall be submitted for Board review and approval three months in advance of enrollment of students in nursing courses.

2.4.3.3 Following the graduation of the first class, the nurse faculty shall prepare and submit five copies of a self evaluation report to the Board for review. The Board will conduct a survey visit to consider full approval of the program.

2.4.3.3.1 The Board's decision regarding approval status shall be sent in writing to the appropriate administrative officers and to the director of the nursing education program.

2.5 Standards for Approval

2.5.1 Organization and Administration.

2.5.1.1 The school shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution, by resolution of its board of control, or by the school's own charter or articles of incorporation.

2.5.1.2 Universities, colleges, community or junior colleges, and public schools offering programs in nursing shall be accredited by their appropriate agencies.

2.5.1.3 Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association.

2.5.1.4 Any agency or institution that is used by a nursing education program shall be authorized to conduct business in the state of Delaware, or in the state in which the agency or institution is located.

2.5.1.5 The authority and responsibility for the operation of the nursing education program shall be vested in a director who is duly licensed to practice professional nursing in Delaware and who is responsible to the controlling board, either directly or through appropriate administrative channels.

2.5.1.6 A written organization plan shall be prepared and submitted to the Board and shall indicate the lines of authority and communication of the program to the controlling body, other departments within the controlling institution, the affiliating and cooperating agencies, and to the advisory committee, if one exists.

2.5.1.7 Adequate funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The director of the nursing program shall be responsible for budget recommendations and administration, consistent with the established policies of the controlling

agency.

2.5.1.8 When the program uses educational or clinical resources that are under the control of another authority, there shall be written agreements with each resource provider. Such agreements shall be developed jointly with the provider, reviewed periodically according to the policies of the program and the agency, and include provision for adequate notice of termination.

2.5.1.9 Clerical services shall be provided to support the program with a minimum of one full-time secretary and additional secretarial staff as needed.

2.5.2 Philosophy and Objectives

2.5.2.1 Philosophy and objectives shall be clearly stated in writing.

2.5.3 Faculty

2.5.3.1 Minimum Qualifications

2.5.3.1.1 All nursing faculty members, including the director, shall hold current licenses to practice as Registered Nurses in Delaware.

2.5.3.1.2 The director and each member of the nursing faculty shall be academically and professionally qualified for the position to which appointed. All nursing faculty members shall maintain professional competence in their area(s) of teaching responsibility through professional development activities such as nursing practice, participation in professional meetings, workshops, formal college courses, and nursing research.

2.5.3.1.3 The director of a baccalaureate degree program shall hold an earned doctoral degree or have a specific plan for completing a doctoral degree and shall hold a degree in nursing at the Master's level or higher. The director shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

2.5.3.1.4 The director of a nursing education program shall hold a minimum of a Master's degree. The director shall hold a degree in nursing at the baccalaureate level or higher and shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

2.5.3.1.5 Each member of the nursing faculty shall hold a baccalaureate degree in nursing or a Master's in nursing. Faculty employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

2.5.3.1.6 Non-nurse members of the faculty shall hold academic and professional credentials in

their field of specialization.

2.5.3.2 Number

2.5.3.2.1 The number of faculty members shall be sufficient to prepare the students for licensure, to achieve the objectives as stated in the school's application, and reasonably proportionate to:

2.5.3.2.1.1 Number of students enrolled;

2.5.3.2.1.2 Frequency of admissions;

2.5.3.2.1.3 Education and experience of faculty members;

2.5.3.2.1.4 Number and location of clinical facilities; and

2.5.3.2.1.5 Total responsibilities of the faculty members.

2.5.3.3 Conditions of employment

2.5.3.3.1 Qualifications and responsibilities for faculty member positions shall be defined in writing.

2.5.3.3.2 Written personnel policies shall be consistent with the policies of the sponsoring institution.

2.5.3.3.3 Faculty assignments shall allow time for class and laboratory preparation, teaching, program evaluation, improvement of teaching methods, guidance of the students, participation in faculty organizations and committees, attendance at professional meetings, and participation in continuing education activities.

2.5.3.4 Functions

2.5.3.4.1 The principal functions of the faculty shall be to:

2.5.3.4.1.1 Develop the philosophy and objectives of the nursing program;

2.5.3.4.1.2 Develop, implement, evaluate and revise the curriculum;

2.5.3.4.1.3 Participate in the recruitment, admission and retention of students in the nursing program;

2.5.3.4.1.4 Establish criteria for promotion and completion of the program in nursing;

2.5.3.4.1.5 Evaluate student achievement on the basis of established criteria;

2.5.3.4.1.6 Recommend successful candidates for degree, diploma and other forms of recognition; and

2.5.3.4.1.7 Participate in appropriate activities of the controlling institution.

2.5.3.5 Organization

2.5.3.5.1 The nursing faculty shall attend regular meetings of the faculty for the purpose of developing, implementing and evaluating the nursing curriculum.

2.5.3.5.2 Committees shall be established as needed.

2.5.3.5.3 Written rules or bylaws shall govern the conduct of nursing faculty meetings and committees.

2.5.3.5.4 Minutes of faculty and committee meetings, including action taken, shall be recorded and available for reference.

2.5.3.5.5 Provision shall be made for nursing student membership and participation on faculty committees and in committee meetings as appropriate.

2.5.3.5.6 Where nursing practice/education (advisory) committees are established, their functions and relationship to the board of control and to the program shall be clearly defined

2.5.3.5.7 Written rules shall govern the activities of the nursing practice/education (advisory) committee(s) and minutes of the meetings shall be on file in the administrative office of the program.

2.5.4 Students

2.5.4.1 Admission, Promotion and Graduation

2.5.4.1.1 Criteria

2.5.4.1.1.1 Policies and procedures related to the selection and admission of students are the responsibility of the individual school.

2.5.4.1.1.2 Students shall be admitted on the basis of established criteria and without discrimination as to age, race, religion, sex, sexual preference, national origin, or disability.

2.5.4.1.1.3 There shall be written policies for the admission and re-admission of students.

2.5.4.1.1.4 Schools granting advanced standing after admission via challenge examinations, College Level Examination Program, teacher made tests or any other method shall have written criteria for granting course credit.

2.5.4.1.1.5 The policies for promotion, retention and graduation shall be published in the school catalogue or in other appropriate documents that are available to students.

2.5.4.1.1.6 All candidates in a program that requires applicants to be registered nurses must be licensed in Delaware if any clinical experiences occur in the State.

2.5.4.2 Services

2.5.4.2.1 There shall be written policies for student welfare as related to health, counseling and guidance, financial aid, and residence life, if offered.

2.5.4.2.2 There shall be well-defined written policies governing payment and refund of tuition and other fees.

2.5.5 Information

2.5.5.1 Annual Report

2.5.5.1.1 By October 1 of each year, five copies of an annual report of the nursing education program shall be sent to the Board, using the format supplied by the Board. The report will include information from August 1 of the previous year through July 31 of the current academic year.

See 3 DE Reg 1373 (4/1/00)

2.5.5.2 School Records

2.5.5.2.1 A nursing education program shall maintain a system of records which shall contain all data relating to approval by any agency or body. The data shall include, but not be limited to, course outlines, minutes of faculty and committee meetings, pertinent correspondence, reports of standardized tests and survey reports. Such data shall be available to the Board representatives during the course of a site survey visit subject to applicable provisions of state and federal law.

2.5.5.3 Student Records

2.5.5.3.1 The school shall maintain a record for each student. Subject to applicable provisions of law, such records shall be available to Board representatives during the course of a site survey visit.

2.5.5.3.2 A final transcript for each student shall be retained in the permanent records of the school.

2.5.5.3.3 Provision shall be made for the protection of records against loss, destruction and unauthorized use.

2.5.5.4 School Bulletin or Catalogue

Current information about the school shall be published periodically and distributed to students, applicants for admission and to the Board. It should include a general description of the program, philosophy and objectives of the controlling institution and of the nursing programs, admission and graduation requirements, fees, expenses, and financial aid, educational facilities, living accommodations, student activities and services, curriculum plan, course descriptions, and faculty staff roster.

2.5.6 Curriculum

The following shall apply to nursing education programs:

2.5.6.1 Nursing Education Programs

2.5.6.1.1 The curriculum shall reflect the stated philosophy and objectives of the school and evidence of an organized pattern of instruction and appropriate supervised nursing practice consistent with sound educational practices and principles of learning.

2.5.6.1.2 LPN and RN programs shall provide for concurrent or correlated theory and clinical practice in the physical and/or mental health care of individuals of all ages, the nursing care of mothers and newborns, children, adults, the aged, individuals with mental health problems, and individuals in diverse settings, not necessarily in separate courses.

2.5.6.1.2.1 Clinical experiences shall include preventive aspects of illness, nursing care of persons with acute and chronic illnesses and rehabilitative care. Opportunities shall be provided for the student to participate in patient teaching in a variety of settings with individuals, families and other groups.

2.5.6.1.2.2 Concurrent and or correlated theory shall include the history of nursing, health care issues, and legal-ethical issues.

2.5.6.1.3 The RN curriculum shall provide instruction in the following fields:

2.5.6.1.3.1 Physical and biological sciences including content from the areas of anatomy and physiology, chemistry, microbiology, pharmacology and nutrition, which may be integrated, combined or presented as separate courses, and

2.5.6.1.3.2 Social and behavioral sciences including content drawn from the fields of communication theory, psychology and sociology and shall serve as a basis for the selection of learning experiences which develop abilities and skills in observation, interviewing, interpersonal relations, and problem-solving.

2.5.6.1.3.3 Professional nursing responsibilities.

2.5.6.1.3.4 Nursing research and nursing leadership in BSN programs.

2.5.6.1.4 The LPN curriculum shall provide instruction in the following fields:

2.5.6.1.4.1 Essential facts and principles in the biological, physical and social sciences including body structure and functions, elementary microbiology, pharmacology and nutrition, signs of emotional and mental health, human growth and development, and administration of medications.

2.5.7 Evaluation

2.5.7.1 Evaluation as a basis for curriculum revision and change in practices is a continuous process and an inherent responsibility of the faculty. The degree to which the faculty accomplishes its objectives shall be determined through evaluation of curriculum content, teaching methodologies, clinical and other learning experiences, student progress, success of graduates on the licensing examination, promotion, retention and degree of nursing competence of the graduate.

2.5.8 Educational Facilities

2.5.8.1 Classrooms, laboratories, and conference rooms shall be adequate in number, size and type for the number of students and educational purposes for which the rooms are used.

2.5.8.2 Offices

2.5.8.2.1 Offices shall be available and adequate in size, number and type to provide faculty with opportunities for uninterrupted work and privacy for conferences with students.

2.5.8.2.2 Space for clerical staff, records, files and other equipment shall be adequate for the needs of the program.

2.5.8.3 Learning Resources

2.5.8.3.1 The library shall have recent, pertinent and sufficient holdings to meet the learning needs of students and faculty.

2.5.8.3.1.1 Provision shall be made for regular additions to and deletions from the library collection.

2.5.8.3.1.2 Library facilities and policies shall be conducive to effective use.

2.5.8.3.2 Equipment shall be available so that a multimedia approach to learning is afforded.

2.5.8.4 Clinical Facilities

2.5.8.4.1 The clinical facility to which the student is assigned for clinical practice is considered an integral part of the nursing program.

2.5.8.4.1.1 Clinical facilities shall be selected by the faculty to provide learning experiences essential to achieve the stated purposes of the program and the stated objectives for each clinical course. They may include, but are not limited to:

2.5.8.4.1.1.1 Inpatient facilities such as acute care hospitals, specialized hospitals, long term and extended care facilities.

2.5.8.4.1.1.2 Outpatient facilities such as hospital based clinics, community health centers, mental health clinics and physicians' offices.

2.5.8.4.1.1.3 Other community agencies such as hospices, health maintenance organizations, day care centers, senior centers and prisons.

2.5.8.4.1.2 The following criteria for clinical facility use must be met:

2.5.8.4.1.2.1 There shall be an environment in which effective learning can take place and in which the student is recognized as a learner.

2.5.8.4.1.2.2 There shall be an adequate number of qualified professional and other nursing personnel not including the student, to ensure safe care of the patient.

2.5.8.4.1.2.3 There shall be a sufficient number and variety of patients to provide adequate learning experiences.

2.5.8.4.1.3 Hospital facilities shall be accredited by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association. Other facilities such as specialized hospitals, long term and extended care facilities and community health agencies shall be licensed or approved by the appropriate approving authority.

2.5.8.4.1.4 Facilities used for clinical experience shall be approved by the Board prior to

the assignment of students. Approval shall be based on information provided by the school on forms furnished by the Board. A visit by Board representatives to the clinical site may be scheduled.

2.5.8.4.1.5 Clinical facilities used in another state require written notification to that jurisdiction's Board of Nursing.

2.5.8.4.1.6 Written agreements between the school and agencies involved shall:

2.5.8.4.1.6.1 Ensure that the faculty are ultimately responsible for the students' learning experiences.

2.5.8.4.1.6.2 Provide for continuous planning for students in cooperation with the director of nursing and appropriate nursing staff of the agency.

2.5.8.4.1.6.3 Provide adequate space for the number of students and faculty to conduct educational conferences.

2.5.8.4.1.7 Observational experiences shall be planned in cooperation with the agency to meet stated objectives.

2.5.9 Program Changes

2.5.9.1 Program Changes Requiring Board of Nursing Prior Approval

2.5.9.1.1 Changes in the philosophy and/or objectives of the program.

2.5.9.1.2 Changes in the overall curriculum plan.

2.5.9.1.3 Changes in the administrative sponsorship of the program.

2.5.9.2 Procedure for Approval of Program Change

2.5.9.2.1 When a program change is contemplated, consultation from the Board is available.

2.5.9.2.2 When any program change is proposed, a written plan shall be submitted to the Board including the:

2.5.9.2.2.1 Description of the change

2.5.9.2.2.2 Rationale for the change

2.5.9.2.2.3 Relationship of the proposed change to the present program.

2.5.9.3 Three copies of these materials shall be submitted to the Board at least one month prior to the Board meeting at which time the request will be considered.

2.5.10 Procedure for Continuing Full Approval

2.5.10.1 Each nursing education program that is accredited by a Board-approved national accrediting agency for nursing education must submit a copy of the self-study document and the letter of notification of accreditation status by October following the reaccreditation visit. This is contingent on the program remaining accredited and sharing copies of all correspondence related to compliance with the

national accrediting agency's recommendations. Extraneous material will be disseminated to Board Members at the discretion of the Executive Director in consultation with the President.

See 1 DE Reg 1883 (6/1/98)

See 3 DE Reg 1373 (4/1/00)

2.5.10.2 Each nursing education program that does not have Board approved national accreditation will be re-evaluated at least every five years. Survey visits may be scheduled as determined by the Board.

See 1 DE Reg 1884 (6/1/98)

2.5.10.2.1 Representative(s) of the Board will conduct a survey visit on a date mutually acceptable to the nursing program and the Board.

2.5.10.2.2 The Board shall notify the director of the nursing education program of the intended survey visit by June of the year preceding the survey visit. The Director shall coordinate an agenda for the visit with the Board and submit it to the Board office three weeks prior to the visit for distribution to the team.

2.5.10.2.3 The school shall submit five copies of a comprehensive self-evaluation report, following the format supplied by the Board, by October 1 of the survey year.

See 3 DE Reg 1373 (4/1/00)

2.5.10.3 Interim visits may be made at any time within the five-year period either by request or as deemed necessary by the Board, with advance notice. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

2.5.10.4 If the Board determines that a program is not maintaining the standards of Section 2.5 of these Rules and Regulations, the program shall be granted conditional approval and given a reasonable period of time to correct deficiencies.

2.5.10.5 A failure to attain an eighty percent pass rate on the licensure examination for first time candidates as reflected in two consecutive annual reports will require presentation to the Board of a plan to identify and correct deficiencies. Progress reports will be required.

2.5.10.5.1 A program reporting five or fewer candidates in a 12 month period with a failure to attain an eighty percent pass rate as reflected in two consecutive annual reports must provide a written explanation to the Board for action.

2.5.10.6 Deficiencies sufficient to warrant a determination of conditional approval (probation) may include one or more of the following:

2.5.10.6.1 Failure to adhere to the school's stated philosophy and curriculum objectives.

2.5.10.6.2 Repeated violations of stated academic and/or admission policies.

2.5.10.6.3 Failure to maintain a faculty

and administration of adequate size and qualifications.

2.5.10.6.4 Use of students for nursing services or other purposes that are not primarily educational.

2.5.10.6.5 Failure to provide adequate resources for cognitive learning and clinical practice.

2.5.10.6.6 Failure to admit and retain students and/or hire and promote faculty and other personnel without discrimination as to age, race, religion, sex, sexual preference, national origin, or disability.

2.5.10.6.7 Failure to attain an eighty percent pass rate on the licensure examination for first time candidates in any three consecutive calendar years.

2.5.10.6.8 Any other deficiencies that, in the opinion of the Board, detrimentally affect the educational process.

2.5.10.7 Upon notification of conditional approval (probation), the program administrator shall submit an action plan no less than two weeks preceding the Board meeting designated in the notification. The action plan shall include identification of the deficiency(ies), proposed corrective action, and projected timeline to remediate the deficiency(ies). The program administrator will be invited to present the action plan at the designated Board meeting. The Board may approve the plan as submitted, recommend revisions, or reject the plan. The program shall submit progress reports as specified by the Board during the term of conditional approval (probation). Prior to the expiration of the probationary period, the program administrator will be invited to meet with the Board to review the status of the plan relative to remediation of the deficiency(ies). A program becomes eligible for unconditional approval when the Board is satisfied that the stated deficiency(ies) has been corrected. If satisfactory remediation has not occurred in the stated timeline, the program administrator will submit an explanation and revised plan with projected timeline. The Board may approve the plan as submitted, or with revisions, or reject the plan and propose to withdraw program approval.

See 3 DE Reg 1373 (4/1/00)

2.5.10.8 A program that fails to correct these deficiencies to the satisfaction of the Board within a reasonable time shall be discontinued after a hearing in which facts regarding such deficiencies are established.

See 3 DE Reg 1373 (4/1/00)

2.5.10.9 Provisions of Rules 2.6.1.1.2, 2.6.1.1.2.3, 2.6.1.1.2.4, and 2.6.1.1.2.5 shall prevail for any program for which Board approval has been discontinued.

See 3 DE Reg 1373 (4/1/00)

2.6.1 Termination of a Nursing Program

2.6.1.1 The controlling institution shall:

2.6.1.1.1 Submit written notification to the Board of its intent to terminate or interrupt the nursing program.

2.6.1.1.2 Provide for the completion

of the nursing program for all students currently enrolled.

2.6.1.1.3 Safeguard the quality of the educational program for these students.

2.6.1.1.4 Provide for the permanent retention of records of students and graduates.

2.6.1.1.5 Notify the Board in writing as to the location of records and where requests for records may be sent.

2.7.1 Procedure for Annual Review of Nursing Education Programs

2.7.1.1 The Board shall review the annual reports and self-evaluation reports of the programs to be submitted each October 1.

See 3 DE Reg 1373 (4/1/00)

2.7.1.2 Following review of the reports from the programs, written notification of the action taken at the regularly scheduled board meeting, including any recommendations, shall be sent to the appropriate administrative officers of the school. This could include notification of the Board's intention to conduct a site visit.

2.7.3 Site Visits

2.7.3.1 For any site visit, the President shall designate the Board members who are to make the survey visits and the chair person of the survey team. At least one member of each team shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

2.7.3.2 The site visit may be made by a Board member(s) and a nursing education consultant, the latter with special expertise at the same level of nursing education as the program. The consultant shall be selected from a list of qualified persons submitted by the nursing program and approved by the Board. Costs associated with the hiring of the consultant shall be borne by the program.

2.7.3.3 The Board will indicate in advance any clinical areas they wish to visit.

2.7.3.4 The school shall schedule separate interviews for the visitors with:

2.7.3.4.1 The nurse administrator of the program

2.7.3.4.2 The faculty

2.7.3.4.3 Representative students from each level

2.7.3.4.4 Others as deemed appropriate by the agency or the Board.

2.7.3.5 The school shall have records available for visitor review, including:

2.7.3.5.1 Committee minutes

2.7.3.5.2 Course materials

2.7.3.5.3 Evaluation data regarding the entire program

2.7.3.5.4 Other materials as specified by the survey team.

(Approved 11/8/95)

(Revised 7/8/98)

3.0 Nursing Refresher Courses

3.1 Statement of Purpose

A nursing refresher course is required for Registered and Licensed Practical Nurses who are presently ineligible for endorsement or reinstatement of licensure because they have been inactive in nursing practice for five or more years.

3.1.1 Nurses successfully completing a refresher course may apply for licensure by reinstatement and may resume active practice.

3.1.2 An orientation program does not take the place of a refresher course.

3.2 Course Content

3.2.1 The design of the course shall emphasize adult teaching/learning methods wherein the learner is responsible for considerable self-study under the guidance of the faculty.

3.2.2 Course content for both Registered/Licensed Practical Nurses shall include but not be limited to concepts from the following areas: nursing care of mothers and newborns, children, adults, the aged, and individuals with mental health problems, and shall include:

3.2.2.1 current professional/practical nursing trends,

3.2.2.2 legal aspects of professional/practical nursing,

3.2.2.3 the nursing process,

3.2.2.4 communication skills,

3.2.2.5 pharmacology,

3.2.2.6 fluid and electrolytes

3.2.2.7 commonly used lab tests and values,

3.2.2.8 nutrition,

3.2.2.9 Basic Life Support, and

3.2.2.10 basic nursing procedures

3.2.3 The Registered Nurse course content shall also include:

3.2.3.1 physical and mental assessment, and

3.2.3.2 crisis intervention,

3.2.4 The refresher course for the Registered Nurse shall have a minimum of 20 hours of theory and a minimum of 40 hours of clinical practice.

3.2.5 The Licensed Practical Nurse course content shall also include:

3.2.5.1 The Licensed Practical Nurse's relationship to the health care team.

3.2.6 The refresher course for the Licensed Practical Nurse shall have a minimum of 15 hours of theory and a minimum of 30 hours of clinical practice.

3.2.7 Each course shall include sufficient theory and supervised clinical practice to meet the course objectives.

3.3 Clinical Facilities

3.3.1 The clinical facilities shall be:
 3.3.1.1 Able to support the necessary clinical practice.

3.3.1.2 Accredited.

3.3.1.3 Approved by the Board of Nursing.

3.3.1.4 Acute and/or long-term care.

3.4 Faculty Qualifications

3.4.1 The director and/or faculty of the course shall be a Registered Nurse licensed in Delaware with a minimum of a baccalaureate degree in nursing.

3.5 Evaluation

3.5.1 There shall be an evaluation that will measure acquisition of the knowledge, skills and abilities needed to return to active nursing practice.

3.5.2 Evaluation tools that may be used include:

3.5.2.1 Written examination

3.5.2.2 Evaluation of clinical competence

3.5.2.3 Written required graded assignments

3.5.3 The course coordinator shall verify to the Board of Nursing in writing that each nurse participant has successfully completed the refresher course.

3.6 Procedure for Approval and Continuing Approval

3.6.1 Refresher courses offered to meet requirements for professional or practical nurse licensure, renewal, endorsement, reinstatement or reactivation shall be approved by the Board prior to student enrollment.

3.6.2 Applications for course approval shall be submitted to the Board at least ninety days prior to the starting date.

3.6.3 Applications for approval shall include:

3.6.3.1 Name of institution offering the program

3.6.3.2 Type of program:

3.6.3.2.1 Registered Nurse refresher program

3.6.3.2.2 Licensed Practical Nurse refresher program

3.6.3.3 Faculty and their qualifications

3.6.3.4 Course outline, including:

3.6.3.4.1 Theoretical and clinical objectives

3.6.3.4.2 Course content

3.6.3.4.3 Hours of theory and practice

3.6.3.4.4 Facilities used for clinical practice

3.6.3.4.5 Evaluation procedures

3.6.4 Approval shall be considered after the program has been reviewed and has met the standards of the Board. Written notification of the action taken at a regularly scheduled board meeting, including any recommendations, shall be sent to the appropriate administrative officers of the program. A site visit may be made at the discretion of the Board.

3.6.5 When any program change(s) is projected,

plan shall be submitted to the Board including:

3.6.5.1 Proposed change(s)

3.6.5.2 Rationale for the change(s)

3.6.5.3 Relationship of the proposed change(s) to the present program(s)

Five copies of these materials shall be submitted to the Board at least one month prior to the Board meeting at which the request will be considered.

3.6.6 The institution shall submit five copies of an Annual Report every September 1.

3.6.7 Every three years on September 1 of the due year the institution shall submit five copies of a comprehensive self-evaluation report, based on the requirements for approval as stated by the Board.

3.6.7.1 A survey visit may be made at the Board's discretion.

4.0 Alternate Supervised Practice Plan for Nurses Inactive in Practice Five or More Years If No Refresher Course Is Available.

4.1 Introduction

4.1.1 Nursing and the health care field have undergone many changes in the past two decades. Most nurses who are reentering practice after a period of inactivity of five or more years need to be oriented to changes that may have an impact on their role and the competency of their practice.

4.2 Statement of Purpose

4.2.1 To provide opportunities for a nurse who is presently ineligible for endorsement of licensure, reinstatement of licensure, or renewal of licensure because the nurse fails to satisfy the 1000 practice hours in the past five years or a minimum of 400 nursing practice hours in the past two years, to review and update nursing knowledge and skills in order to become licensed and resume active practice.

4.2.2 This alternate supervised practice plan applies only if a Delaware Board of Nursing approved refresher course in nursing is not available within a reasonable distance or time.

4.3 Procedural Guidelines

4.3.1 The participating facility must be no less than a skilled nursing facility as defined by the Office of Health Facilities Licensing and Certification.

4.3.2 Upon agreeing with an applicant to provide a period of supervised practice for the assurance of minimal competency, the Director of Nursing of the employing agency shall verify this agreement in a letter on agency stationary to the Board.

4.3.3 Upon receipt of verification of this supervised practice, a temporary permit to practice will be issued by the Board to the nurse for presentation to the health care institution. The clinical experience evaluation form will be sent to the health care institution providing this

supervised practice opportunity.

4.3.4 The Director of Nursing shall designate a single Registered Nurse to provide the supervised clinical nursing practice of no less than 240 hours. The assigned nurse who provides the supervision is accountable for the quality of the supervised experience and for accurate assessment of the competence of the applicant.

4.3.5 The Board shall issue a letter of authorization to each applicant upon approval.

4.3.6 Upon completion of the required hours, the supervising nurse shall submit a completed agency evaluation form.

4.3.7 The Director of Nursing shall submit a statement confirming satisfactory completion of the supervised plan, and a recommendation related to the licensure reinstatement of the applicant.

4.3.8 Based on the submitted documentation, the Board will issue a license or a letter of intent to deny licensure.

5.0 Guidelines for Courses Related to Assistance with Medications 24 Del.C. 1902

5.1 Definition

“Assistance with medications” means a situation where a designated care provider functioning in a setting authorized by 24 Del.C. §1921 of this Chapter, who has taken a Board approved medication training program, or a designated care provider who is otherwise exempt from the requirement of having to take the Board approved self administration of medication training program, assists the patient in self-administration of medication other than by injection, provided that the medication is in the original container with a proper label and directions. The designated care provider may hold the container for the patient, assist with the opening of the container, and assist the patient in taking the medication.

5.2 Procedure for Administering Training Course

5.2.1 Three copies of each proposed medication training course shall be submitted to the Board for approval or advance notice made to the Board that the approved core training program will be used.

5.2.2 Credentials of all instructors shall be submitted to the Board for approval.

5.2.3 Upon completion of the course, the instructor shall submit a list of the successful students to the Board.

5.3 Provider Qualifications

5.3.1 Upon completion of this assistance with self-administration of medications training course, the designated care provider will be able to meet the objectives as indicated in the Board approved course guidelines.

5.3.2 Designated care providers will be recertified as specified by the Board of Nursing.

5.4 Annual Reporting

5.4.1 The administrator of the program shall submit an annual report to the Board of Nursing by August 1 on a form provided by the Board.

See 3 DE Reg 1373 (4/1/00)

5.4.2 The report shall indicate compliance with the guidelines as set forth in the Board approved assistance with administration of medication training program.

6.0 Requirements and Procedures for Licensure

6.1 Examinations

6.1.1 The Board declares that the National Council Licensure Examination-RN (NCLEX-RN) and the National Council Licensure Examination-PN (NCLEX-PN) are the required examinations for licensure in Delaware. The Division of Professional Regulation has the authority to review and approve the content and validity of examinations.

6.1.2 Up to July 1982, the passing score for professional nurse candidates was a standard score of 350 on each test of the State Board Test Pool Examination.

6.1.3 Effective July 1, 1982, the passing score for Registered Nurse candidates was 1600 on the NCLEX-RN and 350 on NCLEX-PN.

6.1.4 Effective July 1, 1988, results are reported and recorded as pass or fail.

6.1.5 The candidate shall take the licensing examination within 90 calendar days following graduation from a Board approved program of professional or practical nursing and not there after without petitioning the Board for specific authorization to test after the 90 day period. Such petitions may be granted by the Board upon a showing of good cause.

See 3 DE Reg 1373 (4/1/00)

6.1.6 To be eligible to take the examination for licensure for practical nursing, the applicant must be a graduate of a Board approved program for practical nursing. A graduate of a program for professional nursing will be denied permission to take the examination for licensure as a practical nurse.

6.1.7 The candidate shall file two applications for each examination.

6.1.7.1 The NCLEX application shall be filed with a non-refundable fee.

6.1.7.2 The candidate shall file a completed and notarized Delaware application for licensure by examination, along with the required fee.

6.1.7.3 In addition, the candidate shall file a signed official school transcript indicating the date of graduation or date degree was conferred. If this is not possible, a certifying letter from the director indicating the candidate had completed the program will be accepted until an official transcript is available.

6.1.7.4 The candidate shall present the admission card issued by the Board in order to be admitted to any portion of the examination.

6.1.8 A candidate who has been accepted but is unable to attend the scheduled examination must notify the Board prior to the starting time or during the first day of examination with a specific reason for not attending. If the reason is acceptable to the Board, (e.g. candidate is ill, death in immediate family, accident, etc.) the Delaware application for licensure by examination will be extended to the next examination date.

6.2 Temporary Permits Prior to Examination

6.2.1 Prior to the employment starting date the candidate shall submit a notarized application for a temporary permit on a form provided by the Board.

6.2.2 The temporary permit is a limited license authorizing professional or practical nursing practice only at the institution employing the graduate, and only under supervision and pending the results of the examination.

6.2.3 Any graduate who has completed the requirements of a state board of nursing approved program of professional or practical nursing and who has filed for licensure by examination in Delaware may be employed in professional or practical nursing, working under the direct supervision of a Registered Nurse pending results of the licensing examination.

6.2.4 Direct supervision means supervision by a Registered Nurse on the same assigned unit during the same time period. The term "unit" is defined as one staffed unit of a maximum of forty patients.

6.2.5 In order to practice nursing in Delaware with a temporary permit, a recent graduate of a state board of nursing approved program of nursing in another state must file an application for licensure before beginning to practice. If the graduate has taken, or is scheduled to take, the NCLEX Examination in the state in which the program is located, the applicant shall file an application for licensure by endorsement in Delaware.

6.2.5.1 Candidates must submit written documentation that they are candidates for the NCLEX in the state in which the examination is being written.

6.2.6 The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

6.2.7 Only a candidate approved to take an examination scheduled after graduation from an approved State Board of Nursing program in the United States or its territories may be issued a temporary permit to practice nursing, good until the release of the examination results.

6.2.8 The temporary permit shall terminate forthwith if a candidate fails to take the examination in the time prescribed. The Board will notify the candidate's employer of the termination of the permit. The candidate shall return the permit to the Board.

6.2.9 If extenuating circumstances exist, the candidate may apply to the Board for reissuance of a temporary permit. If the reason is acceptable, the permit may

be reissued. (Refer to Section 6.7, Temporary Permits)

6.3 Test Results

6.3.1 In the case of a successful candidate, the results are released in the following order: the candidate, the director of the school of nursing and the news media. In the case of the unsuccessful candidate the results are released in the following order: the candidate, the employer, and the director of the school program.

6.3.2 A successful candidate will receive the test results and a copy of the Law regulating the practice of nursing in Delaware, (24 Del.C. Ch. 19), and a certificate of registration with a permanent license number.

6.3.3 A letter to unsuccessful candidates will accompany the test results to advise them of their status and the procedure to be followed for re-examination.

6.3.4 Candidates for licensure who fail the National Council Licensure Examination may not be employed in nursing, are not permitted to practice nursing as defined in the Law, and must return the temporary permit upon receipt of the failure notification.

See 3 DE Reg 1373 (4/1/00)

6.3.5 The candidate's employer shall be notified that the temporary permit is not valid, and the candidate may not be employed in nursing until the NCLEX has been passed.

See 3 DE Reg 1373 (4/1/00)

6.3.6 The applicant shall retake the examination within a one-year period following notification of failure in order to be eligible for re-examination and not there after without petitioning the Board for specific authorization to retest after the one-year period. Such petitions may be granted by the Board upon a showing of good cause to allow for further examination. There is a fee for each re-examination. Any candidate who graduated following the date of February 1982 may retake NCLEX for an unlimited number of times within a five year period from the date of graduation from an approved nursing education program. Notwithstanding the foregoing, any candidate who graduates from an approved nursing education program after April 30, 2000 may retake NCLEX an unlimited number of times within a two year period from graduation and not there after without petitioning the Board for specific authorization to retest after the two year period. Such petitions may be granted by the Board upon a showing of good cause to allow further examination.

See 3 DE Reg 1373 (4/1/00)

6.4 Requirements for Applicants Graduating from Foreign Programs

6.4.1 Applicants graduating from programs outside of the United States and not licensed by the State Board Test Pool Examination or NCLEX in another state:

6.4.1.1 Must have been issued a certificate of licensure by the licensing agency in the state, territory, or country where the nursing program is located;

6.4.1.2 Must submit a certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the educational requirements of a curriculum for the preparation of professional nurses which is equivalent to the approved professional schools in Delaware;

6.4.1.3 Must submit official English translations of all required credentials;

6.4.1.4 Must, in instances when completion of a four-year high school course study or its equivalent cannot be verified, take the high school equivalence examination given by a State Department of Education;

6.4.1.5 Must submit evidence that the program from which applicant is a graduate meets the approved standards adopted by the Board (24 Del.C. §§1910, 1914) and Rules and Regulations: 2.5. (If the program does not include the areas specified in the above curricula, the deficiencies must be made up before the applicant is eligible to take NCLEX);

6.4.1.6 Are allowed one year from the date of Board review of the completed application to make up all deficiencies, including the taking of the initial examination;

6.4.1.7 Effective July 1, 1982, professional nurse applicants must have passed the NCLEX examination (with a minimum standard score of 1600) and practical nurse applicants must have passed the NCLEX examination (with a minimum standard score of 350) within four examination opportunities, within a period of two years or original notification of failure.

6.4.1.8 Effective July 1, 1988, results are reported and recorded as pass or fail.

6.4.1.9 May be issued a temporary permit and may be employed in professional or practical nursing if the applicant has met all of the Board's prerequisites for taking the NCLEX in Delaware and is scheduled to do so;

6.4.1.10 May work only at the institution employing the applicant, under the direct supervision of a registered nurse pending results of the first licensing examination.

6.4.1.11 Must meet all other requirements for licensure.

6.4.2 All applications will be reviewed by the Board to determine if the applicant is eligible to take the NCLEX Examination or to determine if applicant's educational qualifications are as Board prescribed and may be eligible for licensure by examination.

6.4.3 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination from 1970 - 1979 are eligible for licensure by endorsement.

6.4.4 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination,

first administered August 1980, are eligible for licensure by endorsement with a passing score of 400. (September 15, 1981)

6.4.5 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination after that examination became graded on a pass or fail basis are not eligible for licensure by endorsement and must pass the NCLEX. (June 8, 1996)

6.5 Licensure by Endorsement

6.5.1 All endorsement applicants shall:

6.5.1.1 Submit a completed, signed, and notarized application on a form provided by the Board.

6.5.1.2 Remit the required non-refundable fee.

6.5.1.3 Attach to the application a photocopy of a current license indicating date of expiration.

6.5.1.4 Provide official verification of original licensure in another jurisdiction on a form acceptable to the Board.

6.5.1.5 An applicant for endorsement must have completed high school or must have passed a nationally standardized test, and be otherwise qualified for licensure.

6.5.1.1.2 The Board shall request a reference on a form supplied by the Board from:

6.5.1.1.2.1 the applicant's immediate past employer(s) in the past six months. Such reference(s) should be given by the nursing employer, or if the immediate past employer is not a nursing professional, by the applicant's immediate supervisor (e.g. physician, director, manager). In the case of someone engaged in solo practice or who is self-employed, the reference shall be provided by at least one professional colleague with whom the individual has most recently worked for at least six months in the past five years.

6.5.1.1.2.2 in the event of no previous nursing employer, the Director of the applicant's approved nursing education program. Any unsatisfactory reference shall be brought to the attention of the Board for review.

6.5.1.1.3 If the applicant has not been employed in nursing a minimum of 1000 hours in the past five years or a minimum of 400 hours of nursing practice within the previous two years, the applicant must give evidence of satisfactory completion of an approved refresher program within a two-year period before licensure by endorsement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional/practical nursing.

6.5.1.1.4 All completed applications for endorsement will be submitted to the Board for consideration of approval.

6.5.1.1.5 Issuance of a license shall be

considered as notice of approval of the application.

6.5.1.1.6 All applications will be purged in accordance with Division policy.

6.5.2 Registered Nurses

6.5.2.1 The Board may issue a license to practice professional nursing as a Registered Nurse by endorsement, without a written examination, to an applicant who has been duly licensed as a Registered Nurse under the laws of another state, territory, or foreign country if, in the opinion of the Board, the applicant meets the qualifications for licensure in this state.

6.5.2.2 As of 1950 and thereafter, the State Board Test Pool Examination for professional nursing is the licensing examination authorized for use by all boards of nursing in jurisdictions in the United States. (In July 1982, the examination was re-titled National Council Licensure Examination-RN (NCLEX-RN). Prior to this date, examinations constructed by state boards of nursing are acceptable, providing such examinations include all of the required clinical areas: medicine, surgery, obstetrics-gynecology, pediatrics, psychiatry). Until 1953, the passing score required for each of the tests was 70%.

6.5.2.3 Those applicants graduating as of 1953 and thereafter are required to show evidence of clinical experience in medical nursing, surgical nursing, psychiatric nursing, nursing of children, and obstetrical nursing.

6.5.2.4 An applicant for licensure by endorsement must be a graduate of a State Board of Nursing approved school of nursing, and be otherwise qualified for licensure.

6.5.3 Licensed Practical Nurses

6.5.3.1 Effective October 1, 1963, waiver or equivalency licensure is not acceptable in Delaware. The Board may issue a license to practice nursing as a Licensed Practical Nurse, without a written examination, to an applicant who has been licensed as a Practical Nurse or a person entitled to perform similar services under a different title under the laws of any state, territory or foreign country if, in the opinion of the Board, the applicant has the qualifications required for the licensing of practical nurses.

6.5.3.2 Candidates for licensure are required to have theory and clinical experience in medical nursing, surgical nursing, psychiatric nursing, obstetrical nursing, and nursing of children.

6.5.3.3 The applicant must be a graduate of a Board approved program for practical nursing.

6.5.3.4 A licensed practical nurse applicant for licensure by endorsement must have passed the NCLEX-PN.

6.5.3.5 An applicant for endorsement must be otherwise qualified for endorsement.

6.6 Licensure: Biennial Renewal and Reinstatement

6.6.1 Biennial Renewal of Licensure

6.6.1.1 In order to practice nursing in

Delaware with or without financial compensation, Registered Nurses or Licensed Practical Nurses who are duly licensed under any provision of 24 Del.C. Ch. 19 shall renew their licenses biennially, prior to December 31 of the biennium. In the event that applicant for renewal or reinstatement of licensure has not been actively employed in professional or practical nursing in the past five years, the applicant will be required to give evidence of satisfactory completion of a professional or practical nursing refresher program within an approved agency within a two-year period to renewal before licensure will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.6.1.1.1 Registered Nurses - the license shall be valid for two calendar years expiring each odd-numbered year on dates established by the Department of Administrative Services.

6.6.1.1.2 Licensed Practical Nurses - the license shall be valid for two calendar years expiring each even-numbered year on the dates established by the Department of Administrative Services.

6.6.1.2 The applicant shall indicate nursing employment within the past five years before the renewal application will be processed. A minimum of 1000 hours of nursing practice within the past five years or a minimum of four hundred hours of nursing practice within the past two years is required for licensure by renewal or reinstatement. Verification of completion of the practice hours will occur for a minimum of 1% of the total number of licensees with notice of the audit two months prior to the renewal in a biennium. An additional 2% will be audited within six months of renewal of licensure. See 9.0, for Mandatory Continuing Education requirements.

6.6.1.2.1 Upon receipt of such notice, the licensee must submit verification of compliance for the period being audited/verified. Verification will be done on a form supplied by the Board office that includes employer's name, title, address, telephone number, job title, and dates of employment.

6.6.1.2.2 The employer will submit the completed form directly to the Board office.

6.6.1.2.3 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

6.6.1.2.4 An unsatisfactory verification or audit shall result in Board action.

6.6.1.2.5 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

6.6.1.3 An application for renewal of license will be mailed at least 12 weeks prior to the expiration date of current licensure.

6.6.1.4 Failure to receive the application

for renewal shall not relieve the licensee of the responsibility for renewing their license by the expiration date.

6.6.1.5 Renewal application, along with the required fee, shall be returned to the Board office and postmarked no later than the last day of the month before the month of expiration.

6.6.1.6 Licenses that have lapsed may be reinstated by the Board upon satisfactory explanation by the licensee of failure to renew and after payment of a penalty fee.

6.6.1.7 During the month of expiration, the Board may issue a renewal certificate upon receipt of a renewal application, the documentation of nursing employment, the renewal fee and late fee.

6.6.2 Reinstatement of Licensure

6.6.2.1 Registered Nurses or Licensed Practical Nurses who fail to renew their licenses by February 28, May 31, and September 30, of the renewal period shall be considered to have lapsed licenses and shall not practice nursing in the state of Delaware. After February 28, May 31, and September 30 of the current licensing period, any requests for reinstatement of a lapsed licensed shall be presented to the Board for action. All applicants shall have a minimum of 1000 hours of nursing practice within the previous five years or a minimum of four hundred hours of nursing practice within the past two years before licensure by reinstatement will be granted. The practice of nursing can be with or without financial compensation. In the event the applicant has not been actively employed in nursing as described above, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reinstatement. In the event no refresher course is available, the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.6.2.2 The applicant shall file a notarized application for reinstatement of licensure. The application shall be accompanied by a satisfactory reference from a current or previous employer, renewal fee and penalty fee.

6.6.3 It is unprofessional conduct and a violation of Delaware Law to practice without a license. The Board may refuse a license or refuse to renew a license of a professional nurse or a practical nurse who practices without a current license.

6.6.4 Reinstatement Hearings

6.6.4.1 Hearings for consideration of reinstatement licensure may be held for those applicants who file for reinstatements more than 90 days after the renewal period and who have been practicing nursing without a current license, or who have submitted an unsatisfactory explanation for failure to renew.

6.6.4.2 A notice of hearing shall be sent to the Registered Nurse or Licensed Practical Nurse. The

hearing shall be conducted in accordance with the Administrative Procedures Act and the Nurse Practice Act.

6.6.4.3 The Board shall make determination for reinstatement of licensure or shall determine that the Registered Nurse or Licensed Practical Nurse shall be subject to the penalties provided for violations of the Nurse Practice Act.

6.6.4.4 Upon determination that licensure shall be reinstated, the Board shall issue a license to practice nursing.

6.7 Temporary Permits

6.7.1 The temporary permit is a limited license authorizing professional, practical or graduate nursing practice only at the employing institution for no longer than an initial 90 day period.

6.7.2 Nurses who produce current evidence of licensure to practice nursing in another state and who have applied for endorsement may be issued a temporary permit to practice nursing for a maximum of 90 days, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice within the past two years.

6.7.3 A temporary permit to practice nursing for a maximum of 90 days may be issued to persons who have requested reinstatement of their licensure, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice in the past two years.

6.7.4 All applicants seeking temporary permits to practice professional, practical or graduate nursing in Delaware must:

6.7.4.1 Prior to employment starting date, submit a notarized application for endorsement or examination, completing the portion for a temporary permit, and indicating employer.

6.7.4.2 Have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours in the past two years, if applying for reinstatement or endorsement, with current evidence of licensure from another state.

6.7.4.3 Have been accepted as a nurse employee in Delaware. The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

6.7.4.4 Have graduated from a State Board of Nursing approved program.

6.7.4.5 Pay a licensure fee which is not refundable.

6.7.5 Upon completion of all requirements, a temporary permit will be issued for no longer than 90 days with subsequent renewal periods of 60 and 30 days sequentially.

6.7.6 The Executive Director shall:

6.7.6.1 Keep a register of permits.

6.7.6.2 Refrain from issuing a temporary permit in any doubtful situation until further evidence is obtained or until the Board has given approval.

6.7.7 In the absence of the Executive Director, the President may issue a temporary permit with the same restrictions.

6.8 Inactive Status

6.8.1 A person previously licensed by the Board and not engaged in the practice of nursing in the state of Delaware, but desiring to maintain the right to use the title Registered Nurse or Licensed Practical Nurse, may apply and be granted inactive status by the Board in accordance with these regulations.

6.8.2 A nurse desiring inactive status shall send a written notice to the Board with fee. Upon receipt of notice and fee the Board shall place the name of the person on an inactive status list and shall issue a certificate. The person shall not practice nursing in this state.

6.8.3 A licensee on inactive status shall use the appropriate title, Registered or Licensed Practical Nurse, followed by (INACTIVE).

6.8.4 A licensee will receive a certificate of inactive status with the term Inactive Registered Nurse or Inactive Licensed Practical Nurse printed across the top.

6.8.5 A notice of inactive status shall be sent to all persons on the inactive list at renewal time. To receive a certificate of inactive status, the licensee shall return the renewal notice with the fee.

6.8.6 All applications from persons on inactive status who decide to resume active status will be presented to the Board for review for reinstatement.

6.8.7 In the event the applicant has not been actively practicing nursing within the previous five years, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reactivation, or participate in an alternate Board approved method of evaluating current knowledge in professional or practical nursing. All applicants shall have a minimum of 1000 hours of nursing within the previous five years or a minimum of four hundred hours of nursing practice within the previous two years. See 9.0 for Mandatory Continuing Education requirements.

6.9 Loss of License, Change of Name/address

6.9.1 If a license is lost, stolen or destroyed, the licensee shall submit a letter to the Board explaining the loss. A letter indicating the original number and expiration dates shall be issued by the Executive Director in lieu of a duplicate license.

6.9.2 Licensees who legally change their names and wish to change the name on the license, shall provide notarized copies of evidence, such as marriage licenses or court actions. The maiden name will be retained on the license.

6.9.3 Notice of change of address shall be

submitted in writing within 30 days of the change. All notices from the Board will be sent to the last address provided by the licensee or applicant to the Board.

6.9.4 A list of license numbers of lost, stolen or otherwise destroyed licenses shall be kept on file in the Board office.

6.10 Register of Nurses Licensed in Delaware

6.10.1 Licensure Verification

6.10.1.1 Following the official renewal period, the Executive Director shall request each employer or employing agency to submit to the Board by April 15 a list of all nurses employed. The list shall include the following information:

See 3 DE Reg 1373 (4/1/00)

6.10.1.1.1 Name of employee, alphabetized by last name;

6.10.1.1.2 Classification (Registered Nurse, Licensed Practical Nurse, Advanced Practice Nurse or nurse holding temporary permit);

6.10.1.1.3 License number; and

6.10.1.1.4 Expiration date of current license or temporary permit.

6.10.1.2 Individuals submitting the list attest by their signatures that they viewed each current registration of licensure and advanced practice recognition.

6.10.1.3 The list will be checked by the Executive Director. If it is not possible to verify current licensure, the Executive Director will immediately notify the employer by letter.

6.10.1.4 The Executive Director shall prepare a summary of the survey to be presented to the Board.

6.10.2 Release of Information

6.10.2.1 The Executive Director may release to a citizen of Delaware the following information:

6.10.2.1.1 Whether or not the individual was or is currently licensed,

6.10.2.1.2 Date of original licensure,

6.10.2.1.3 Under what condition license was issued (examination, endorsement, or waiver),

6.10.2.1.4 Whether license was ever suspended or revoked following a hearing.

6.10.2.2 Additional information may be released pursuant to the Freedom of Information Act.

7.0 Standards of Nursing Practice

7.1 Authority

“Standards of nursing practice” means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health care facilities and

organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

7.2 Purpose

The purpose of standards is to establish minimal acceptable levels of safe practice for the Registered and Licensed Practical Nurse, and to serve as a guide for the Board to evaluate safe and effective nursing care.

7.3 Standards of Practice for the Registered and Licensed Practical Nurse

7.3.1 Standards related to the Registered Nurse.

7.3.1.1 The Registered Nurse shall conduct and document nursing assessments of the health status of individuals and groups by:

7.3.1.1.1 Collecting objective and subjective data from observations, examinations, interviews and written records in an accurate and timely manner. The data include but are not limited to:

7.3.1.1.1.1 Biophysical and emotional status and observed changes;

7.3.1.1.1.2 Growth and development;

7.3.1.1.1.3 Ethno-cultural, spiritual, socio-economic and ecological background;

7.3.1.1.1.4 Family health history;

7.3.1.1.1.5 Information collected by other health team members;

7.3.1.1.1.6 Ability to perform activities of daily living;

7.3.1.1.1.7 Consideration of client's health goals;

7.3.1.1.1.8 Client knowledge and perception about health status and potential, or maintaining health status;

7.3.1.1.1.9 Available and accessible human and material resources;

7.3.1.1.1.10 Patterns of coping and interaction.

7.3.1.1.2 Sorting, selecting, reporting, and recording the data.

7.3.1.1.3 Analyzing data.

7.3.1.1.4 Validating, refining and modifying the data by using available resources including interactions with the client, family, significant others, and health team members.

7.3.1.1.5 Evaluating data.

7.3.1.2 Registered Nurses shall establish and document nursing diagnoses that serve as the basis for the strategy of care.

7.3.1.3 Registered Nurses shall develop strategies of care based on assessment and nursing diagnoses. This includes, but is not limited to:

7.3.1.3.1 Prescribing nursing intervention(s) based on the nursing diagnosis.

7.3.1.3.2 Initiating nursing interventions through

7.3.1.3.2.1 Giving care.

7.3.1.3.2.2 Assisting with care.

7.3.1.3.2.3 Delegating care.

7.3.1.3.3 Identifying to the identification of priorities in the strategies of care.

7.3.1.3.4 Setting realistic and measurable goals for implementation.

7.3.1.3.5 Identifying measures to maintain comfort, to support human functions and responses, to maintain an environment conducive to well being, and to provide health teaching and counseling.

7.3.1.3.6 Supervising the caregiver to whom care is delegated.

7.3.1.4 Registered Nurses shall participate in the implementation of the strategy of care by:

7.3.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.3.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the direction and supervision of a recognized authority.

7.3.1.4.3 Providing an environment conducive to safety and health.

7.3.1.4.4 Documenting nursing interventions and client outcomes.

7.3.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.3.1.5 Registered Nurses shall evaluate outcomes, which shall include the client, family, significant others and health team members.

7.3.1.5.1 Evaluation data shall be appropriately documented; and

7.3.1.5.1.1 Be communicated to the client, family, significant others and appropriate members of the health care team; and

7.3.1.5.1.2 Used as a basis for modifying outcomes by reassessing client health status, modifying nursing diagnoses, revising strategies of care or prescribing changes in nursing interventions.

7.4 Standards of Practice for the Licensed Practical Nurse

7.4.1 Standards related to the Licensed Practical Nurse's contributions to the nursing process.

7.4.1.1 The Licensed Practical Nurse shall contribute to and document nursing assessments of the health status of individuals and groups by:

7.4.1.1.1 Sorting, selecting, reporting, and recording the data.

7.4.1.1.2 Collecting objective and subjective data from observations, examinations, interview and written records in an accurate and timely manner. The data include but are not limited to:

7.4.1.1.2.1 Biophysical and emotional

status and observed changes;

7.4.1.1.2.2 Growth and development;

7.4.1.1.2.3 Ethno-cultural, spiritual, socio-economic, and ecological background;

7.4.1.1.2.4 Family health history;

7.4.1.1.2.5 Information collected by

other health team members;

7.4.1.1.2.6 Ability to perform

activities of daily living;

7.4.1.1.2.7 Consideration of client's

health goals;

7.4.1.2 Licensed Practical Nurses shall participate in establishing and documenting nursing diagnoses that serve as the basis for the strategy of care.

7.4.1.3 Licensed Practical Nurses shall participate in developing strategies of care based on assessment and nursing diagnoses.

7.4.1.3.1 Contributing to setting realistic and measurable goals for implementation.

7.4.1.3.2 Participating in identifying measures to maintain comfort, to support human functions and responses to maintain an environment conducive to well-being, and to provide health teaching and counseling.

7.4.1.3.3 Contributing to setting client priorities.

7.4.1.4 Licensed Practical Nurses shall participate in the implementation of the strategy of care by:

7.4.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.4.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the directions and supervision of a recognized licensed authority.

7.4.1.4.3 Providing an environment conducive to safety and health.

7.4.1.4.4 Documenting nursing interventions and client outcomes.

7.4.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.4.1.5 Licensed Practical Nurses shall contribute to evaluating outcomes by appropriately documenting and communicating to the client, family, significant others and the health care team members.

7.5 Standards Related to the Registered and Licensed Practical Nurse's Competencies and Responsibilities.

7.5.1 Registered and Licensed Practical Nurses shall:

7.5.1.1 Have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of professional and practical nursing practice.

7.5.1.2 Accept responsibility for competent nursing practice.

7.5.1.3 Function as a member of the

health team:

7.5.1.3.1 By collaborating with other members of the health team to provide optimum care, or

7.5.1.3.2 As an LPN under the direction and supervision of a recognized licensed authority.

7.5.1.4 Consult with nurses, other health team members and community agencies for continuity of care and seek guidance as necessary.

7.5.1.5 Obtain instruction and supervision as necessary when implementing nursing techniques.

7.5.1.6 Contribute to the formulation, interpreting, implementing and evaluating of the objectives and policies related to professional and practical nursing practice within the employment setting.

7.5.1.7 Participate in evaluating nurses through peer review.

7.5.1.8 Report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal authorities.

7.5.1.9 Practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

7.5.1.10 Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.

7.5.1.11 Respect the client's right to privacy by protecting confidentiality unless obligated by law to disclose the information.

7.5.1.12 Respect the property of clients, their families and significant others. In addition to the proceeding, the Registered Nurse shall:

7.5.1.13 Delegate to others only those nursing interventions that those persons are prepared or qualified to perform.

7.5.1.14 Supervise others to whom nursing interventions are delegated.

7.5.1.15 Retain professional accountability for care when delegating.

7.5.1.16 Teach safe practice to other health care workers as appropriate.

7.6 Dispensing

7.6.1 Definitions

7.6.1.1 "Dispense" - To deliver a medication pursuant to a standing order.

7.6.1.2 "Prescription label" - a label affixed to every prescription or drug order which contains the following information at a minimum.

7.6.1.2.1 A unique number for that specific drug order.

7.6.1.2.2 The date the drug was dispensed.

7.6.1.2.3 The patient's full name.

7.6.1.2.4 The brand or established

name and manufacturer and the strength of the drug to the extent it can be measured.

7.6.1.2.5 The practitioner's directions as found on the prescription order.

7.6.1.2.6 The practitioner's name.

7.6.1.2.7 The initials of the dispensing nurse.

7.6.1.2.8 The name and address of the facility or practitioner from which the drug is dispensed.

7.6.1.2.9 Expiration date.

7.6.1.3 "Standing order" - An order written by the practitioner which authorizes a designated registered nurse or nurses to dispense prescription drugs to his/her patients(s) according to the standards listed below.

7.6.2 Standards:

7.6.2.1 Only registered nurses may assume the responsibility of dispensing as defined in the Nurse Practice Act and delineated below.

7.6.2.2 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.

7.6.2.3 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.

7.6.2.4 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.

7.6.2.5 Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.

7.6.2.6 The nurse may not designate any part of the dispensing function to any other individual who is not licensed to dispense.

7.6.2.7 The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.

7.6.2.8 The nurse-dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.

7.6.2.9 A usage review process must be established for the medicines dispensed to assure proper patient usage.

7.6.2.10 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.

7.6.2.11 Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.

7.6.2.12 The dispensing nurse shall assume the

responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.

7.6.2.13 Conformance to paragraphs G through L are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.

7.6.3 Medication modifications

7.6.3.1 A nurse may accept a change in the dosage of a medication from a pharmacist who is acting as an agent of the physician.

7.7 Delegation

7.7.1 Definitions

7.7.1.1 "Unlicensed Assistive Personnel"

Individuals not licensed to perform nursing tasks that are employed to assist in the delivery of client care. The term "unlicensed assistive personnel" does not include members of the client's immediate family, guardians, or friends; these individuals may perform incidental care of the sick in private homes without specific authority from a licensed nurse (as established in 24 Del.C. §1921(a)(4) of the Nurse Practice Act).

7.7.1.2 "Delegation" - Entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties while retaining the accountability for such act.

7.7.1.3 "Supervision" - The guidance by a registered nurse (RN) for the accomplishment of a function or activity. The guidance consists of the activities included in monitoring as well as establishing the initial direction, delegating, setting expectations, directing activities and courses of action, critical watching, overseeing, evaluating, and changing a course of action.

7.7.1.4 "Accountability" - The state of being accountable, answerable, or legally liable for actions and decisions, including supervision.

7.7.2 Conditions

7.7.2.1 The following conditions are relevant to delegation:

7.7.2.1.1 Only RNs may delegate.

7.7.2.1.2 The RN must be knowledgeable regarding the unlicensed assistive personnel's education and training and have opportunity to periodically verify the individual's ability to perform the specific tasks.

7.7.2.1.3 The RN maintains accountability for determining the appropriateness of all delegated nursing duties and responsibility for the delivery of safe and competent care. Unlicensed assistive personnel may not reassign a delegated act.

See 1 DE Reg 1888 (6/1/98)

7.7.3 Criteria

7.7.3.1 The RN may delegate only tasks that are within the scope of sound professional nursing

judgment to delegate.

7.7.3.2 Determination of appropriate factors include, but are not limited to:

7.7.3.2.1 stability of the client's condition

7.7.3.2.2 educational background, skill level, or preparation of the individual

7.7.3.2.3 nature of the nursing act that meets the following:

7.7.3.2.3.1 task is performed frequently in the daily care of a client

7.7.3.2.3.2 task is performed according to an established sequence of steps

7.7.3.2.3.3 task may be performed with a predictable outcome

7.7.3.2.3.4 task does not involve ongoing assessment, interpretation or decision making that cannot be logically separated from the task itself.

7.7.3.3 The RN must be readily available in person or by telecommunication.

7.7.4 Exclusions

7.7.4.1 The following activities require nursing knowledge, judgment, and skill and may not be delegated by the RN to an unlicensed assistive person. These exclusions do not apply to Advanced Practice Nurses.

See 1 DE Reg 1888 (6/1/98)

7.7.4.2 Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

7.7.4.3 Development of nursing diagnosis and care goals;

7.7.4.4 Formulation of the plan of nursing care and evaluation of the effectiveness of the nursing care provided;

7.7.4.5 Specific tasks involved in the implementation of the plan of care which require nursing judgment, skill, or intervention, that include, but are not limited to: performance of sterile invasive procedures involving a wound or anatomical site; nasogastric, newly established gastrostomy and jejunostomy tube feeding; nasogastric, jejunostomy and gastrostomy tube insertion or removal; suprapubic catheter insertion and removal; (phlebotomy is not considered a sterile, invasive procedure);

7.7.4.6 Administration of medications, including prescription topical medications; and

7.7.4.7 Receiving or transmitting verbal orders.

8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware

8.1 Authority

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 Del.C. §§1902(d),

1906(1), 1906(7).

8.2 Purpose

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

8.3 Scope

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

8.4 Definitions

“Advanced Practice Nurse” as defined in 24 Del.C. §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

“Certified Nurse Midwife (C.N.M.)” A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

“Certified Registered Nurse Anesthetist (C.R.N.A.)” A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists' Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

“Clinical Nurse Specialist (C.N.S.)” A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master's degree program in a clinical nurse specialty or post Master's certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must

meet the established criteria approved by the Delaware Board of Nursing.

“Nurse Practitioner (N.P.)” A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master’s program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women’s health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

“Audit” The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

“Board” The Delaware Board of Nursing

“Clinical Nursing Specialty” a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

See 3 DE Reg 1373 (4/1/00)

“Collaborative Agreement” Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

“Guidelines/ Protocols” Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

“National Certification” That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

- American Academy of Nurse Practitioners
- American Nurses Credentialing Center
- American Association of Nurse Anesthetists
- Council on Certification of Nurse Anesthetists
- American Association of Nurse Anesthetists
- Council on Recertification of Nurse Anesthetists
- National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
- National Certification Board of Pediatric Nurse Practitioners and Nurses.
- ACNM Certification Council, Inc.

“Post Basic Program”

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

“Scope of Specialized Practice” That area of practice in which an Advanced Practice Nurse has a Master’s degree or a post-basic program certificate in a clinical nursing specialty with national certification.

“Supervision” Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

8.5 Grandfathering Period

8.5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

8.6 Standards for the Advanced Practice Nurse

8.6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

8.6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice

decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse Within the Specialized Scope of Practice include but are not limited to:

8.7.1 Eliciting detailed health history(s)

8.7.2 Defining nursing problem(s)

8.7.3 Performing physical examination(s)

8.7.4 Collecting and performing laboratory tests

8.7.5 Interpreting laboratory data

8.7.6 Initiating requests for essential laboratory procedures

8.7.7 Initiating requests for essential x-rays

8.7.8 Screening patients to identify abnormal problems

8.7.9 Initiating referrals to appropriate resources and services as necessary

8.7.10 Initiating or modifying treatment and medications within established guidelines

8.7.11 Assessing and reporting changes in the health of individuals, families and communities

8.7.12 Providing health education through teaching and counseling

8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public

8.7.14 Delegating tasks appropriately

8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20).

8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 Del.C. §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for

communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an Advanced Practice Nurse

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 Del.C. Ch. 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 Del.C. §1906(20) - (22).

8.10 Temporary Permit for Advanced Practice Nurse Licensure

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and 8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been

passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1.1 current employer reference,

8.10.5.1.1.2 supervision available,

8.10.5.1.1.3 job description,

8.10.5.1.1.4 letter outlining any extenuating circumstances,

8.10.5.1.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

3 DE Reg 1373 (4/1/00)

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 Del.C. Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

8.11 Maintenance of Licensure Status: Reinstatement

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past

two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

8.12 Audit of Licensees

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

8.13 Exceptions to the Requirements to Practice

8.13.1 The requirements set forth in 8.9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

8.14 Definitions

8.14.1 Collaborative Agreement - Includes

8.14.1.1 A true collegial agreement between

two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical privileges or a health care facility approved job description of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 National Certification - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

The agencies so approved include:

A. American Academy of Nurse Practitioners

B. American Nurses' Credentialing Center

C. American Association of Nurse Anesthetists
Council on Certification of Nurse Anesthetists

D. American Association of Nurse Anesthetists
Council on Recertification of Nurse Anesthetists

E. ~~National Certification Corporation for
Obstetric, Gynecologic and Neonatal Nursing Specialties~~

F. ~~National Certification Board of Pediatric
Nurse Practitioners and Nurses~~

G. ~~ACNM Certification Council, Inc.~~

8.14.3 Pharmacology/Pharmacotherapeutics - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 Prescription Order - includes the prescription date, the name of the patient, the name, address, area of specialization and business telephone number of the advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the signature name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, practitioner's prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 REQUIREMENTS FOR INITIAL INDEPENDENT PRACTICE/PRESCRIPTIVE AUTHORITY

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article VIII of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or correspondence from school officials. If the applicant cannot produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least a thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education program within the five two years prior to application for independent practice and/or independent prescriptive authority. This may be a ~~comprehensive~~ continuing education programs or a three credit, semester long graduate level course. ~~CRNAs may meet this requirement by submitting evidence of thirty hours of pharmacology/therapeutics related continuing education offerings within the five years prior to application for independent practice and/or independent prescriptive authority.~~ The thirty hours may also occur during the generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings,

the applicant must have available program descriptions, and/or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 REQUIREMENTS FOR INDEPENDENT PRACTICE/PRESCRIPTIVE AUTHORITY BY ENDORSEMENT

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 2.1 and 2.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two years.

8.17 APPLICATION

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 PRESCRIPTIVE AUTHORITY

8.18.1 APNs may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 Del.C. Section 2536(C)), parenteral medications, medical therapeutics, devices and diagnostics.

8.18.2 APNs will be assigned a provider identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APNs must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APNs must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 Del.C., Section 4732(a).

8.18.4 APNs may request and issue professional samples of legend, including schedule II-V controlled substances, and over-the-counter medications that must be labeled in compliance with 24 Del.C., Section 2536(C).

8.18.5 APNs may give verbal prescription orders.

8.19 PRESCRIPTIVE WRITING

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

8.20 RENEWAL

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ~~fifteen~~ ten hours of JPC approved pharmacology/~~and therapeutics~~ pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/pharmacotherapeutics content may be a separate course or integrated within other offerings.

8.21 DISCIPLINARY PROCEEDINGS

8.21.1 Complaints against an APN will be forwarded to the Division of Professional Regulation. A complaint related to independent practice/prescriptive authority will be referred to the Joint Practice Committee for review and disposition and then forwarded to the Board of Medical Practice for review and final approval in an expeditious manner.

8.21.2 All other complaints regarding APNs will continue to be under the sole jurisdiction of the Board of Nursing.

9.0 Rules and Regulations Pertaining to Mandatory Continuing Education

9.1 Definitions

9.1.1 The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise.

"Approved Method" means a planned educational experience, as described in 9.3.

"Approved Provider" means an entity that is one of the following:

A nationally accredited provider of nursing related continuing education; or

An organization or agency that is approved as a provider or has programs that are approved by a nationally accredited approver of nursing related continuing education; or

A Board of Nursing approved school of nursing; or

A staff development department within a licensed health care agency; or an accredited educational institution; or

An entity approved by the Delaware Board of Nursing, pursuant to 9.4 and 9.5, if not meeting any other criteria.

"Audit" means

The verification of completion of continuing education requirements for a minimum of 1% of the total number of licenses issued during a specified time period. (Refer to 9.6) or

The verification of adherence to continuing education approved provider requirements during a specified time period. Providers may be audited as the Board determines. (Refer to 9.7)

"Biennium" means the two year period of

licensure beginning in an odd numbered year and ending in the next odd numbered year for the Registered Nurse and the two year period of licensure beginning in an even-numbered year and ending in the next even numbered year for the Licensed Practical Nurse.

"Contact Hour" means one contact hour equals a minimum of 50 minutes. One half contact hour equals a minimum of 25 minutes.

"Continuing Education" means those professional experiences designed to enrich the nurse's contribution to health care and for the purpose of protecting the public health, safety, and welfare.

"Orientation" means the means by which nurses are introduced to the philosophy, goals, policies, procedures, role expectations, physical facilities and special services in a specific work setting. Orientation programs do not meet the continuing education requirements of these rules.

See 1 DE Reg 1893 (6/1/98)

9.2 Continuing Education Licensure Renewal Requirements

9.2.1 Board Authority

9.2.1.1 The Board derives its authority under 24 **Del.C.** §1906(19), to create continuing education requirements as a prerequisite to obtaining a current license and to establish an audit system to assure compliance. This requirement is in addition to the practice requirement as stated in 6.5.

9.2.1.1.1 During each biennium, each Registered Nurse must earn 30 contact hours and each Licensed Practical Nurse must earn 24 hours, to be credited to that biennium.

9.2.1.1.1.1 Units of measurement for continuing education shall be: no less than .5 contact hours and be as follows:

9.2.1.1.1.1.1 50 Minutes = 1 Contact Hour

9.2.1.1.1.1.2 25 Minutes = .5 Contact Hour

9.2.1.1.1.1.3 1 Academic Semester Hour (Credit) = 5 Contact Hours

9.2.1.1.1.1.4 1 C.M.E. = 1.2 Contact Hours

9.2.1.1.1.1.5 Certification/recertification (excluding preacquired skills and knowledge) = 20 Contact Hours (Only During the Biennium Awarded)

9.2.2 Requirements

9.2.2.1 Renewal

9.2.2.1.1 To obtain a Registered Nurse or Licensed Practical Nurse license for the next biennium period, the licensee shall submit, along with the renewal application and fee, a completed report on a form furnished by the Board office, documenting the completion of all continuing education requirements for that biennium.

9.2.2.2 Reinstatement

9.2.2.2.2 To obtain a Registered Nurse or Licensed Practical Nurse license through reinstatement, the applicant shall submit, along with the reinstatement application and fee, a completed report on a form provided by the Board office, documenting the completion of all continuing education requirements for the past two years.

9.2.2.3 Reinstatement/Endorsement

9.2.2.3.1 A Registered Nurse who has endorsed into Delaware during a biennium or whose license was reactivated or reinstated during a biennium must earn 15 contact hours if more than a full calendar year remains in the biennium to obtain a Registered Nurse license for the next biennium period. A Licensed Practical Nurse must earn 12 contact hours if more than a full calendar year remains in the biennium to obtain a Licensed Practical Nurse license for the next biennium period.

9.2.3 The required hours shall be completed in the period for which the license was issued. Contact hours from a previous licensure period will not count nor may credits be accumulated for use in a future licensing period.

9.2.4 To be approved for continuing education credit, offerings shall meet the qualifications of appropriate subject matter as specified in these Rules and Regulations.

9.2.5 The licensee shall retain all original certificates or transcripts to verify completion of each continuing education offering and award of contact hours.

9.2.6 Exceptions

9.2.6.1 Those persons licensed by examination within a biennial renewal period are exempt from continuing education requirements for that biennium.

9.2.6.2 A licensee who has had a physical or mental illness during the license period can apply to the Board of Nursing for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one renewal period. Should the illness extend beyond one renewal period, a new request must be submitted.

9.2.6.3 A request for a waiver will be reviewed and acted upon within 90 days of receipt.

See 1 DE Reg 1894 (6/1/98)

9.3 Approved Methods to Earn Contact Hours

9.3.1 Academic Studies

9.3.1.1 A course offered by an accredited school, university or college for which college credit has been awarded and/or for which class attendance is necessary. May include successful completion of challenge examinations.

9.3.2 Authoring an Article, Book Chapter, or Independent Study

9.3.2.1 The article, book chapter, or independent study (See 9.3.6) must be related to nursing. Proof of acceptance from the editor or the published work

will document achievement of this type of continuing education. A maximum of five contact hours of continuing education may be earned per biennium by this method. Letters to the editor or opinion statements will not be recognized.

9.3.3 Certification/Recertification

9.3.3.1 A process by which a nongovernmental agency or association certifies that an individual licensed to practice as an Advanced Practice Nurse, a Registered Nurse, or a Licensed Practical Nurse has met certain predetermined standards specified for specialty practice. National certification or recertification equals 20 contact hours awarded during the biennium. A certification/recertification document indicating the date of recognition must be available. When recertification requirements include more than 20 contact hours, the additional contact hours can be applied toward the total of 30 contact hours for R.N. or 24 contact hours for L.P.N. licensure.

9.3.4 Conference

9.3.4.1 A meeting that brings together participants for one or more days to discuss the latest developments and activities from individuals with special expertise in the subject matter of the conference.

9.3.5 Extension Studies

9.3.5.1 A course given through an accredited school, college or university for which academic credit may or may not be awarded and for which class attendance is not necessary.

9.3.6 Independent Study

9.3.6.1 An educational activity designed for completion by learners, independently, at the learner's own pace and at a time of the learner's choice.

9.3.6.1.1 Examples: Articles in journals, videocassette programs, computer programs for which there is a test of knowledge and a certificate awarded upon completion.

9.3.7 Inservice Education

9.3.7.1 Activities intended to help nurses acquire, maintain, and/or increase the level of competence in fulfilling his or her assigned responsibilities, specific to the expectations of the employer. Planned inservices must be a minimum of 25 minutes. Mandatory education, such as CPR, infection control, fire, safety, and facility specific policies and practices, is not recognized as continuing education.

9.3.8 Presentation

9.3.8.1 Educational presentations, excluding preparation time, made to other health professionals that are not required by an individual's job description. The presenter must submit program brochures, course syllabi or letter from the provider identifying the participation of the presenter. Contact hours shall be equal to the actual presentation time. A maximum of five contact hours of continuing education may be earned per biennium by this method.

9.3.9 Research Project

9.3.9.1 The research project must have been done during the biennium. The licensee must submit an abstract as evidence of being one of the recognized researchers. A maximum of five contact hours of continuing education may be earned per biennium by this method.

9.3.10 Symposium or Seminar

9.3.10.1 A meeting of groups of participants to explore, in depth, a pre-selected, thoroughly researched topic. The emphasis is on discussion and a free exchange of ideas and experiences.

9.3.11 Workshop

9.3.11.1 A meeting that offers opportunities for persons with common interest or problems to meet with specialists to consider new knowledge and practices and to experience working on specific relevant tasks.

9.3.12 Any method not on this approved list will require that a written petition justifying the request be submitted to the Board of Nursing.

9.3.12.1 The Board may consider the request at its next regularly scheduled Board meeting if received at least two weeks before the meeting. If less than two weeks, the request will be processed at the following meeting.

See 1 DE Reg 1894 (6/1/98)

9.4 Continuing Education - Provider

9.4.1 Board Authority

9.4.1.1 The Board derives its authority under 24 Del.C. Ch. 19, to create requirements for becoming an approved provider and maintaining that status. The Board also has the authority to develop an auditing mechanism to verify compliance with criteria for approved providers.

9.4.2 Criteria for approved providers

9.4.2.1 The approved providers shall produce evidence of their capability to adhere to criteria indicative of quality continuing education for nurses. Each provider approved under 9.1, will be assigned a provider number by the Board and shall provide an annual statement of compliance with these criteria.

9.4.3 Subject matter criteria. The provider will ensure that:

9.4.3.1 The subject matter is specifically designed to meet the objectives, the stated level and learning needs of the participants.

9.4.3.2 The content is planned, logically sequenced and reflects input from experts in the subject matter.

9.4.3.3 The subject matter reflects the professional educational needs of the learner in order to meet the health care needs of the consumer.

9.4.4 Criteria related to the operation of an approved continuing education providership. The provider

shall:

9.4.4.1 Have a consistent, identifiable authority who has overall responsibility for the operation of the providership and execution of its offerings.

9.4.4.2 Have an organizational structure and training objectives.

9.4.4.3 Develop course descriptions, objectives, and learning outcomes.

9.4.4.4 Assign contact hours according to a uniform measure of credit and not award contact hours for less than 25 minutes.

9.4.4.5 Establish dates and times for programs.

9.4.4.6 Plan and structure programs with teaching and learning methodologies that include a statement of purpose and measurable educational objectives.

9.4.4.7 Use faculty who have academic preparation and/or experience in the subject matter.

9.4.4.8 Use evaluation processes or tools that provide participants an opportunity to evaluate in writing the learning experience, the instructional methods, facilities, and resources.

9.4.4.9 Award the contact hours and be responsible for assurance that all criteria in this chapter are met, when co-providing.

9.4.4.10 Notify the Board within 30 days of changes in the administrative authority, the address of the provider, and its ability to meet the criteria.

9.4.5 Criteria related to record maintenance and continuing education programs. The provider shall:

9.4.5.1 Maintain records on persons awarded contact hours for a minimum of six years from their date of program completion. The records shall include the name of licensee, contact hours awarded, social security number, title, and dates of offerings.

9.4.5.2 Provide for secure storage and retrieval of individual attendance and information regarding each offering.

9.4.5.3 Furnish each participant with an individual record of completion that displays the following on the front of the certificate: participant's name, provider name and number, contact hours awarded, starting and ending dates of the offering, subject matter and a reminder to the participant to retain the certificate for the period of licensure.

See 1 DE Reg 1896 (6/1/98)

9.5 Board Approval Process for Providers from 9.1.

9.5.1 An application will be sent to a potential provider upon request. Upon submission of a non-refundable fee, the required materials and a determination of the Delaware Board of Nursing that the materials fulfill the criteria for providers as specified in these Rules and Regulations, initial approval will be granted for up to three

years.

See 1 DE Reg 1896 (6/1/98)

9.5.2 The following materials and information must accompany an application:

9.5.2.1 A description of the administrative authority of the potential provider;

9.5.2.2 The job description of the person who is administratively responsible for provider activities;

9.5.2.3 The continuing education philosophy purpose and goals;

9.5.2.4 Organizational charts defining lines of authority and communication in relation to continuing education;

9.5.2.5 Plan for faculty selection;

9.5.2.6 Evidence of nursing participation in program planning and/or administration;

9.5.2.7 A record system and a procedure to ensure confidentiality and safe storage;

9.5.2.8 The criteria used to plan and implement continuing education activities;

9.5.2.9 The criteria used to verify attendance;

9.5.2.10 A procedure that ensures the participant who successfully completes an educational activity will receive a document displaying an attendance record, number of contact hours awarded, provider name and number, title of presentation, and the date and location for each offering;

9.5.2.11 Registration procedure(s);

9.5.2.12 A plan for evaluation, including:

9.5.2.12.1 A procedure for participant evaluation that includes assessment of the instruction, resources and facilities, and

9.5.2.12.2 A system for the follow up of suggestions for improvement;

9.5.2.13 Documents from two typical sample course offerings including:

9.5.2.13.1 A narrative of the planning of the offerings including evidence of nursing participation;

9.5.2.13.2 A sample brochure or other form of advertising;

9.5.2.13.3 Course content, i.e., topical course outline, objectives;

9.5.2.13.4 Teaching-learning methodologies and supportive materials;

9.5.2.13.5 Bibliography; and

9.5.2.13.6 A sample participant evaluation form.

9.5.3 The Executive Director will review the completed application upon receipt.

9.5.3.1 The review is based on the criteria as specified in these Rules and Regulations.

9.5.3.2 If the Executive Director finds the application incomplete, the applicant will be notified and have two opportunities to submit revised applications.

9.5.3.3 If the application does not meet established criteria within three reviews, the Executive Director may recommend that the Board deny it.

9.5.3.4 When the application meets all requirements as set forth for providers in these Rules and Regulations, the Executive Director shall recommend approval to the Board.

9.5.3.5 The Board may approve for up to three years, or elect not to approve.

9.5.3.6 The provider will be notified of the Board of Nursing's decision in writing within two weeks.

9.5.3.7 A provider number will be assigned at the time of approval and issued within three weeks. This number must be used in all correspondence with the Board. This number will be published on a list of approved providers.

9.5.3.8 An application that has been denied provider status by the Board may be re-submitted one year after the denial date.

9.5.4 Complaints against providers.

9.5.4.1 Provider approval may be rescinded at any time during the approved period for noncompliance with approved provider requirements or for complaints that the Board determines indicate the program does not meet criteria.

9.5.4.2 Providers may appeal a decision by requesting a hearing before the Board.

9.6 Audit of Licensees

9.6.1 The Board will randomly and on an individual basis select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that their records are to be audited for compliance with the continuing education requirements.

See 1 DE Reg 1897 (6/1/98)

9.6.1.1 Upon receipt of such notice, the licensee must submit verification of compliance for the period of licensure being audited. Verification materials which may be requested include proof of attendance, academic transcripts, certificates showing number of contact hours awarded, and documentation of compliance with exceptions.

9.6.1.2 The licensee must submit documentation within three weeks of receipt of notice.

9.6.1.3 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

9.6.1.4 An unsatisfactory audit shall result in Board action.

9.6.1.5 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

9.6.1.6 Fulfillment of the audit requirements must be completed prior to license renewal.

9.7 Audit of Providers

9.7.1 The Board may select approved providers for audit. Upon selection, the Board shall:

9.7.1.1 Notify the approved providers that their records are to be audited for compliance with continuing education requirements;

9.7.1.2 Be provided with records that document compliance with the Rules and Regulations for providers; and

9.7.1.3 Conduct a site visit as necessary.

9.8 Disciplinary Proceedings; Appeal

9.8.1 Failure to comply with continuing education requirements will result in action under Section 1922 of the Nurse Practice Act and the license will be considered lapsed.

9.8.2 Application for reinstatement of a lapsed license must be filed with a completed continuing education document form and the fee paid before practice can continue.

10.0 Disciplinary Proceedings

10.1 Disciplinary Sanctions

10.1.1 The Board may:

10.1.1.1 refuse to issue a temporary permit or a license to practice nursing;

10.1.1.2 revoke, suspend or censure a license to practice nursing;

10.1.1.3 issue a letter of reprimand;

10.1.1.4 place a license on probationary status;

10.1.1.5 refuse to renew a license; or

10.1.1.6 otherwise discipline a licensee as provided by 24 **Del.C.** §1922.

10.2 Procedures

10.2.1 Any individual shall submit written complaints of violations of 24 **Del.C.** Ch. 19 to the Division of Professional Regulation and the Executive Director shall retain a copy.

10.2.2 Any Board member receiving a complaint alleging a practitioner's or licensee's violation of the Nurse Practice Act should promptly forward the complaint to the Division of Professional Regulation with a copy to the Executive Director.

10.2.3 Hearings on licensing matters and complaints filed with the Board that allege a practitioner or licensee has violated the Nurse Practice Act, 24 **Del.C.** Ch. 19, shall be heard and determined by the Board in accordance with the applicable provisions of the Nurse Practice Act and the Administrative Procedures Act, 29 **Del.C.** Ch. 101. When the licensee/practitioner, prosecuting Deputy Attorney General, and appointed Board member, if any, consent, the complaint may be resolved through the Consent Agreement process described herein in lieu of a formal disciplinary hearing before the Board.

10.3 Reissuance of License Following Disciplinary Action

10.3.1 Upon application made by the licensee, a suspended or probated license may be reissued or reinstated, on such conditions as the Board may determine, after the imposed period of discipline has concluded and after evidence is presented to satisfy the Board that the condition that lead to the disciplinary action has been corrected.

10.4 Unprofessional Conduct Defined

10.4.1 Nurses whose behavior fails to conform to legal standards and accepted standards of the nursing profession and who thus may adversely affect the health and welfare of the public may be found guilty of unprofessional conduct.

10.4.2 Unprofessional conduct shall include but is not limited to the following:

10.4.2.1 Performing acts beyond the authorized scope of the level of nursing practice for which the individual is licensed.

10.4.2.2 Assuming duties and responsibilities within the practice of nursing without adequate preparation, or without maintaining competency.

10.4.2.3 Performing new nursing techniques and/or procedures without education and practice.

10.4.2.4 Inaccurately recording, falsifying or altering a patient or agency record.

10.4.2.5 Committing verbal or physical abuse of patients or co-employees.

10.4.2.6 Assigning unlicensed persons to perform the practice of licensed nurses.

10.4.2.7 Delegating nursing practice or advanced nursing practice to unqualified persons.

10.4.2.8 Failing to supervise persons to whom nursing practice or advanced nursing practice has been delegated.

10.4.2.9 Leaving a patient assignment except in documented emergency situations.

10.4.2.10 Failing to safeguard a patient's dignity and right to privacy in providing services.

10.4.2.11 Violating the confidentiality of information concerning a patient.

10.4.2.12 Failing to take appropriate action to safeguard a patient from incompetent, unethical or illegal health care practice.

10.4.2.13 Practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological, or mental impairment.

10.4.2.14 Diverting drugs, supplies or property of a patient or agency.

10.4.2.15 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

10.4.2.16 Practicing professional or practical nursing when license or temporary permit has expired.

10.4.2.17 Practicing as an Advanced Practice Nurse when designation and/or certification and/or temporary permit has expired.

10.4.2.18 Practicing professional or practical nursing in this state without a current Delaware license or permit.

10.4.2.19 Practicing as an Advanced Practice Nurse in this state without current designation and a registered nurse license and/or temporary permits.

10.4.2.20 Allowing another person to use her/his nursing license, temporary permit, or certification of Advanced Practice Nurse for any purpose.

10.4.2.21 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule and regulation intended to guide the conduct of a nurse or other health care provider.

10.4.2.22 Resorting to fraud, misrepresentation or deceit in taking NCLEX-RN or PN, or in obtaining a license, temporary permit or advanced practice designation.

10.4.2.23 Disclosing the contents of the licensing examination or soliciting, accepting or compiling information regarding the examination before, during or after its administration.

10.4.2.24 Failing to report unprofessional conduct by another licensee.

10.4.2.25 Practicing or holding oneself out as an Advanced Practice Nurse in any category without holding a Board authorized certificate of state designation in such category.

10.4.2.26 Failing to comply with the requirements for mandatory continuing education.

10.4.2.27 Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

10.4.2.28 Failing to comply with the terms and conditions set out in a disciplinary action of the Board.

See 1 DE Reg 1898 (6/1/98)

10.5 Consent Agreement Process

10.5.1 Disciplinary proceedings subject to resolution by Consent Agreement process shall proceed as follows:

10.5.1.1 The President shall appoint a Board member, subject to ratification by the Board at the next meeting, to review each formal complaint against a licensee and determine whether the Consent Agreement process can be used in lieu of a formal disciplinary hearing. Similarity to previous cases that have established Board remedies and severity and number of counts may be considered. The assigned Deputy Attorney General may also request that the complaint proceed by the Consent Agreement process.

10.5.1.2 If the appointed Board member and the state prosecutor concur that a consent agreement is appropriate, the Board office shall send the licensee a copy of the formal complaint and a request to proceed either to a

formal hearing or to a Consent Agreement process within 14 days. If the Consent Agreement process is not appropriate, the complaint will be set for hearing.

10.5.1.3 The licensee shall be required to respond within 14 days when the Consent Agreement alternative is offered. When the response deadline is not met or the licensee declines the Consent Agreement process, a hearing date shall be scheduled.

10.5.1.4 Upon receipt of agreement to use the Consent Agreement process, the appointed Board member and Board counsel shall receive a copy of the complaint, investigative report, and any other appropriate material within seven days.

10.5.1.5 The Board counsel shall consult with the appointed Board member in drafting the Consent Agreement. Negotiations among the licensee and his/her counsel, if any, the Board member, Board counsel, and the prosecutor may take place by informal conferences, telephone, or correspondence. The Consent Agreement will include a brief recitation of the facts; the licensee's acknowledgment of charge(s) in the complaint and violation of the Nurse Practice Act; the licensee's waiver of rights to the formal disciplinary hearing before the Board; and sanction to be imposed.

10.5.1.6 The consultation and drafting and acceptance of the consent agreement are to be done in a timely fashion, with a report to the Board at 60 day intervals until presentation for approval by the Board.

10.5.1.7 If agreement among all parties has not occurred after 120 days from presentation of the first consent agreement, the Board shall be notified of the reasons why no agreement has been reached. If appropriate, the Board may schedule a complaint for a hearing.

10.5.1.8 After the licensee and his or her attorney, if any, the prosecutor, and the appointed Board member have signed the consent agreement, it shall be presented to the Board at the Board's next meeting for signature by a quorum of the Board and entry as an order of the Board.

10.5.1.9 The Consent Agreement is not effective until it is entered as an order of the Board. At any time before the Consent Agreement is entered as an order of the Board, either the licensee or the State may terminate the consent agreement process and elect to proceed by formal disciplinary hearing before the Board.

11.0 Public Records

11.1 Public records and access thereto are governed by regulation established by the Division of Professional Regulation.

12.0 Advisory Committees

12.1 Appointment of Committees

12.1.1 The Board may appoint advisory

committees to assist in the performance of its duties.

12.1.2 Advisory committees will be chaired by a Board member.

12.1.3 Each advisory committee shall consist of members who have expertise in the subject assigned.

12.1.4 Any such advisory committee shall function in the public interest, and no member shall be designated as representative of any agency or organization.

12.2 Membership of Committees

12.2.1 Potential members shall submit resumes and receive Board approval prior to appointment.

12.2.2 Members may include Registered Nurses, Licensed Practical Nurses, Advanced Practice Nurses and lay persons.

13.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

13.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

13.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

13.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

13.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and

Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

13.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

13.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

13.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

13.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

13.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

13.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

13.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

13.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

13.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

13.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

13.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

13.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

13.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

13.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DIVISION OF PROFESSIONAL REGULATION

BOARD OF PODIATRY

Statutory Authority: 24 Delaware Code,
Section 506(a)(1) (24 Del.C. 506(a)(1))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 506(1), the Delaware Board of Podiatry proposes to revise its rules and regulations. Please note that the following rules and regulations are a total rewriting and reordering of existing regulations to implement and clarify the Board's authorizing law, 24 Del.C. Chapter 5, as revised and adopted on July 20, 1999, and these rules will supersede and replace any previously adopted rules and regulations of the Board. Substantive changes to the regulations include changes in and clarification of the Preceptorship program; clarification of examination requirements and criteria for reciprocity; clarification of inactive status requirements; allowance for certain computer, television or video based continuing education programs and certain self-directed continuing education activities; deletion of provisions pertaining to matters governed by other Acts and Statutes (e.g. disciplinary hearings); and establishing procedural rules pertaining to disciplinary matters and hearings before the Board. In addition, material which unnecessarily duplicates the statutes or other rules and regulations has been stricken. The rules and regulations have been entirely re-ordered and re-numbered.

A public hearing will be held on the proposed Rules and Regulations on Monday, July 10, 2000 at 6:00 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Dana Spruill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Dana Spruill at the above address or by calling (302) 739-4522, extension 205.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

- 1.0 Authority and Effective Date
- 2.0 Board Structure and Function
- 3.0 Licensing
- 4.0 Complaint Review and Disciplinary Proceedings
- 5.0 Education
- 6.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Authority and Effective Date

1.1 These regulations are issued by the Board of Podiatry pursuant to 24 Del.C. §505(a)(1).

1.2 These regulations are adopted in accordance with the 24 Del.C. §505(a)(1) and 29 Del.C., Ch. 101.

2.0 Board Structure and Function

2.1 Special Meeting Requests. The Board shall hold a regularly scheduled business Meeting at least once in each quarter of a calendar year and at such other times as the President deems necessary, or at the request of a majority of Board members. Public notice shall appear in the major newspapers no less than one week prior to the meeting date and notice of all meetings shall comply with the Freedom of Information Act. (24 Del.C. §504(b) and 29 Del.C., Ch. 100)

3.0 Licensing

3.1 Application and Requirements for Licensure. Pursuant to 24 Del.C. §506, an applicant for licensure must meet the requirements of 24 Del.C. §506(a)(1)(2)(3). Once having met those requirements, an applicant for licensure must have satisfactorily passed the national examination with an average overall grade of not less than 75; satisfactorily complete a residency or preceptorship program; and must pass the PM Lexis Examination, Part III (24 Del.C. §505(a)). Upon completion of all those requirements, the Board shall issue a license.

3.2 Examination. Pursuant to 24 Del.C. §§505 and 507, applicants for licensure must have passed an approved national examination by an average overall score of 75. At the present, the approved national examination is administered by the National Board of Podiatry Examiners (NBPE).

3.2.1 Pursuant to 24 Del.C. §507, in the event there shall be in existence no such national examination approved by the Board at any time, the Board may appoint a subcommittee of three persons, to consist of one Board member and two podiatrists who are not currently Board members and who have been licensed in Delaware for ten or more years. That subcommittee shall then devise a licensure examination and formulate a set of administration, grading, and record-keeping procedures, and shall submit same for approval at the next regular meeting of the Board following completion of the draft examination and procedures. The Division of Professional Regulation shall review and approve, subject to the Sunset Committee review, the content and validity of any examination written, developed or used by the Board.

3.3 Licensure by Reciprocity.

3.3.1 In addition to other requirements for licensure by reciprocity set forth in 24 Del.C. §508, the Board may only approve licensure by reciprocity where said applicants have been registered or certified in other states whose requirements for registration or certification are

substantially equal to those of the State of Delaware. Prior to issuing a license by reciprocity, the Board will determine whether said applicants have ever been disciplined or whether there are any disciplinary actions pending.

3.3.2 The Board may, of course, consider applicants for licensure by reciprocity when said applicants have been registered or certified in states whose requirements for certification are more stringent than those of the State of Delaware.

3.3.3 Requirements for registration and certification, as they relate to states other than Delaware, are deemed by the Board to be substantially equal to those of the State of Delaware when said requirements include:

3.3.3.1 Satisfactory completion of licensure examination administered on a national basis, or a state examination equivalent, with an overall average grade of not less than 75; and

3.3.3.2 Satisfactory completion of a hospital residency program approved by the American Podiatric Medical Association (APMA), or completion of an approved preceptorship program in the office of a podiatrist, licensed in the state from which the application is directed, for a period of one year; and

3.3.3.3 Satisfactory completion of a degree of Doctor of Podiatric Medicine or its equivalent from a school currently accredited by the APMA.

3.3.4 Requirements for registration and certification, as they relate to states other than Delaware, shall be deemed by the Board to be more stringent than those of Delaware when said requirements include criteria substantially equivalent to those set forth in 3.3.3.1, 3.3.3.2 and 3.3.3.3 above, and, in addition impose additional threshold requirements for certification or registration, and applications for licensure by reciprocity from such states shall be considered by the Board along with applications from states with requirements substantially equal to those of Delaware, as set forth in regulations 3.3.1 and 3.3.2 above. In addition, the State of licensure must grant reciprocity to Delaware licensees.

3.4 Relicensure After Inactive Status And Renewal of Lapsed Licenses.

3.4.1 A licensee who has been placed in an inactive status by the Board for a period of no more than five years, may obtain a new license and re-enter active practice upon completion of the same continuing education requirements as if they had been actively practicing, as described more fully in regulation 5.2 below. This continuing education must be completed prior to the licensee reentering active practice.

3.4.2 Any licensee whose license lapses for non-renewal may re-apply within one(1) year by paying the fee required by 24 **Del.C.** §510 and having completed all continuing education which a person would have been required to complete for renewal.

4.0 Complaint Review and Disciplinary Proceedings

4.1 Receipt of Complaint. A practitioner or member of the public desiring to file a complaint against a practitioner and/or licensee regulated by the Board shall file a written complaint with the Director of the Division of Professional Regulation who shall mail a certified copy, return receipt requested, of the complaint to the respective commission, board or agency, which regulates the practitioner or licensee named in the complaint.

4.2 The Division's staff shall, within 15 days of the receipt of the complaint, fill out a complaint card, assign a complaint number, and log the complaint in the Division's records. A record of each complaint shall be kept for a period of 5 years.

4.3 The Division shall thereafter mail a copy of the complaint to the named practitioner or licensee. Said mailed copy of the complaint shall constitute notice of the pending complaint against the practitioner. The practitioner may respond, in writing, to the Division to the complaint's allegations within 20 days of the receipt of the complaint by the practitioner or licensee.

4.4 The Division shall then assign a Division investigator to investigate the complaint. At the Board's next regularly scheduled meeting it may assign a member to assist the Division with the investigation of the complaint. Said investigator shall recuse himself or herself from the Board, commission or agency's deliberations on the complaint at any hearing held regarding the complaint. The assisting Board member shall not communicate any issue of law or fact regarding the investigation to any fellow Board members. The Division's investigator shall direct the investigation of the complaint and shall be responsible for issuing a final written report at the conclusion of the investigation.

4.5 The complainant shall also be notified, in writing, within 30 days of receipt of the complaint that the Division of Professional Regulation has received the complaint and it has been referred to be investigated by a Division Investigator.

4.6 Following the investigator's written report, the Division may forward the complaint and report to the Attorney General's office for a review by a Deputy Attorney General who, if warranted, may file a formal complaint against the practitioner and/or licensee. Otherwise, the initial written complaint shall be used in any further hearings in the proceedings. All hearings shall be conducted in accordance with the Administrative Procedures Act, 29 **Del.C.** Ch.101.

4.7 The Division Director, or his designee, is empowered to issue subpoenas for witnesses, documents, physical evidence or any other source of evidence needed during the investigation of a complaint filed under this chapter. If the respondent fails to comply with the subpoena issued pursuant to this subsection, the Division of

Professional Regulation may compel compliance with said subpoena by filing a motion to comply in Superior Court which shall have jurisdiction over this matter. The Board may temporarily suspend a practitioner's license in advance of a final adjudication, or during the appeals process; but only in cases where there is a clear and immediate danger to the health and safety of a patient or to the public if the licensee is allowed to continue to practice. Such suspension may be appealed to the Superior Court.

5.0 Education

5.1 Preceptorship Program.

5.1.1 Pursuant to 24 ~~Del.C.~~ §505(a)(3)(ii), each and every applicant for licensure by examination who has not satisfactorily completed an APMA approved hospital residency program shall complete a one year preceptorship, during which time the applicant's clinical abilities and skills shall be under the observation and supervision of a clinical supervisor, who shall be a Delaware licensed podiatrist who has received the written approval of the Board to supervise the preceptorship of one or more candidates for licensure.

5.1.2 It shall be the responsibility of the Board, in connection with the above described preceptorship requirements to:

5.1.2.1 Approve and certify all clinical observers; and

5.1.2.2 Approve and certify all preceptorship programs and evaluations.

5.1.3 Preceptorships shall commence in February or August of each year and shall run for twelve months.

5.1.4 A candidate for the preceptorship program shall have submitted his application for licensure to the Board, together with a certified copy of satisfactory completion of national examinations pursuant to 24 ~~Del.C.~~ §505(a)(3)(ii), before the Board may approve his admission to the preceptorship program.

5.15 The Board shall, by letter, notify each applicant who has submitted a complete application and evidence of satisfactory test results of that applicant's admission to the preceptorship program.

5.16 Following receipt by an applicant of notice of his admission to the preceptorship program, it shall be the responsibility of the applicant to apply to a licensed practitioner for a twelve month preceptorship with that practitioner, who shall have been approved as a clinical observer by the Board. The Board shall supply each applicant for admission to the preceptorship program with a list of practitioners who are clinical observers approved by the Board.

5.17 Professional liability (malpractice) insurance for preceptorship participants shall be carried by the candidates for licensure. The preceptor shall provide professional liability

(malpractice) coverage for candidates for whom they are the preceptor.

5.18 During the course of each twelve month preceptorship, each candidate shall be evaluated by the clinical observer for whom he is working in the following areas: podiatric medicine, podiatric surgery, orthopedics, preventive medicine, diagnostic radiology, dermatology, trauma and emergency care, sports medicine, podopediatrics, geriatric podiatry, biomechanics, physical medicine and basic practice management. Each candidate shall be evaluated during the twelve month preceptorship by one other licensed practitioner approved by the Board in the following areas: podiatric medicine, physical examination and the basic application of podiatric principles. The primary observer shall submit his observations in the form of a letter addressed to the Board. Accompanying the letter to the Board shall be an evaluation covering the prescribed subjects on the evaluation sheets attached hereto as Exhibit "D". The primary observer shall report to the Board every three months. The secondary observer shall submit a similar and appropriate report by letter to the Board, accompanied by evaluation sheets covering the prescribed subjects. These sheets are attached hereto as Exhibit "D".

5.18.1 In the event that the primary observer has been unable to expose the candidate to any required category of evaluation, he shall advise the secondary observer of this fact and shall include the fact in his quarterly report to the Board.

5.18.2 In the event that a preceptorship candidate receives a negative or deficient evaluation from his clinical observer or from his secondary observer, in two or less of the above described categories of evaluation, the Board shall allow the applicant to correct the deficiency or deficiencies by attendance at and completion of a course or program in each said deficient area. Said program or course shall have prior written approval by the Board. Upon successful completion of all such approved programs, the Board shall forthwith issue to the candidate a letter indicating that he may proceed with his preceptorship program.

5.2 Continuing Education.

5.2.1 Pursuant to 24 ~~Del.C.~~ §505(a)(13), the Board is empowered to provide by rule for continuing medical education. "Continuing medical education," as that term is herein applied by the Board, includes any and all continuing education requirements, as herein below provided, which must be satisfied biennially by all licensed practitioners as a condition for licensure renewal. Each licensed practitioner shall complete, biennially, at least 32 hours of continuing education as a condition of license renewal.

5.2.2 Each practitioner shall be exempt from the continuing education requirement in the first biennial licensing period, or any portion thereof, in which he is

licensed to practice in Delaware. On or before the last day in April every two years, each practitioner shall submit to the Board validated documents which evidences satisfactory completion of the continuing education requirements for the previous two years.

5.2.3 Only approved courses, will be counted toward the 32 hour biennial continuing education requirement. A practitioner may gain approval of any course or program by written application to the Board, stating the title, sponsor and summary of course content. The Board may act upon all such requests at the next regularly scheduled meeting, may act upon such requests at any intervening special meeting convened to consider other issues, or may delegate to any member of the Board the authority to approve continuing education courses on behalf of the Board. Any practitioner who attends and/or completes a course which has not yet been approved by the Board does so at his own risk that the Board may not approve the said course nor allow it to be counted toward completion of the annual requirement of 32 hours of continuing education.

5.2.4 The Board has the authority to make exceptions to the continuing professional education requirements for reasons beyond the licensee's control including, but not limited to, health, military service, foreign residency, and retirement. Upon application, the Board shall set the time in which the licensee must complete the continuing education requirement.

5.2.5 The overriding consideration in determining if a specific program qualifies for continuing professional education program is that it be a formal program of learning which contributes directly to the professional competence of the permit holder. No credit shall be given for business or practice seminars.

5.2.6 Formal programs requiring class attendance will qualify only if:

5.2.6.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years, or the outline is provided to the participant or both.

5.2.6.2 The program is at least one hour (a fifty-minute period) in length.

5.2.6.3 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

5.2.7 The following are deemed to qualify for continuing education without prior Board approval:

5.2.7.1 Any program approved by the APMA, and approved affiliates.

5.2.7.2 Any seminar sponsored by the Delaware Podiatric Medical Association.

5.2.7.3 Any podiatric program sponsored by a hospital or clinic that has been approved by the Board for the Preceptorship programs toward licensure.

5.2.7.4 Any program sponsored by a medical institution that has been formally approved in writing by the

Board in advance of the program date(s).

6.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

6.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates. 6.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

6.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

6.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

6.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of

disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

6.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

6.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

6.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

6.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

6.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

6.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

6.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

6.7 The regulated professional's records of participation

in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

6.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

6.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

6.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

6.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

6.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

THE DELAWARE BOARD OF PODIATRY RULES AND REGULATIONS

- 1.0 General Provisions
- 2.0 Application and Licensing Requirements
- 3.0 Examinations
- 4.0 Reciprocity
- 5.0 Licenses (Temporary, Inactive, renewal)
- 6.0 Continuing Education
- 7.0 Disciplinary Proceedings and Hearings
- 8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 GENERAL PROVISIONS

1.1 Pursuant to 24 Del.C. Chapter 5, the Delaware Board of Podiatry ("the Board") is authorized to, and has adopted, these Rules and Regulations.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board's Administrative Assistant at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) 739-4522. Requests to the Board may be directed to the same office.

1.3 The Board's President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President's absence, the Board's Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board shall elect officers, pursuant to 24 Del. C. §504 in January of each year.

1.5 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.6 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.7 Board members are subject to the provisions applying to honorary state officials in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 Del.C. Chapter 58.

Statutory authority: 24 Del.C. §503; 504; 506.

2.0 APPLICATION AND LICENSING REQUIREMENTS

2.1 Application and Requirements for Licensure. Pursuant to 24 Del.C. §508, an applicant for licensure must meet the requirements of 24 Del.C. §508(a). An applicant for licensure must arrange to provide the Board with a copy of his or her record with the National Practitioners' Data Bank. Upon completion of these requirements, the Board shall issue a license.

2.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete or in proper form until the Board has received all required and requested documents, materials, information and fees.

2.3 Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. degree programs.

Statutory authority: 24 Del.C. §508.

2.4 Residency Program. The hospital residency program shall be approved by and comply with the Special Standards and Requirements established for residency programs by the American Podiatric Medical Association (APMA) and Council on Podiatric Medical Education (CPME).

2.5 Preceptorship Program.

2.5.1 Pursuant to 24 Del. C. §508(a)(2), each

and every applicant for licensure by examination who has not satisfactorily completed an APMA approved hospital residency program shall complete a one year preceptorship, during which time the applicant's clinical abilities and skills shall be under the observation and supervision of a preceptor, who shall be a Delaware licensed podiatrist, who has received the prior written approval of the Board to supervise the preceptorship of one or more candidates for licensure.

2.5.2 Preceptorships shall run for twelve (12) months.

2.5.3 A candidate for the preceptorship program shall submit his or her curriculum vitae, certified transcripts from podiatric medical school(s) showing confirmation of "Doctor of Podiatric Medicine" degree, and evidence of passing scores on National Board Examinations Part I and Part II, before the Board may approve his or her admission to the preceptorship program.

2.5.4 The Board shall, by letter, notify each applicant who has submitted all required documentation of his or her admission to the preceptorship program.

2.5.5 Following receipt by an applicant of notice of his or her admission to the preceptorship program, it shall be the responsibility of the applicant to apply to a licensed practitioner for a twelve (12) month preceptorship with that practitioner. It shall be the responsibility of the Board, in connection with the above-described preceptorship requirements to approve and certify all preceptors; and approve and certify all preceptorship programs and evaluations.

2.5.6 The preceptor shall provide professional liability (malpractice) coverage for candidates for whom they are the preceptor at all times during the preceptorship.

2.5.7 During the course of each twelve (12) month preceptorship, each candidate shall be evaluated by the preceptor (primary clinical observer) for whom he or she is working. The preceptorship shall pattern itself after and ensure exposure to all areas covered by the CPME standards for Rotating Podiatric Residency (RPR) Sections 21.0 through 21.6, and the candidate shall be evaluated in those areas.

Each candidate shall be evaluated during the twelve (12) month preceptorship by one other licensed practitioner (secondary clinical observer) approved by the Board in the following areas: podiatric medicine, physical examination and the basic application of podiatric principles. The primary observer shall submit his observations in the form of a letter addressed to the Board. The primary observer shall report to the Board every three (3) months. The letter shall include an evaluation covering the prescribed subjects above. The secondary observer shall submit a similar appropriate report by letter to the Board, accompanied by evaluations covering the prescribed subjects.

2.5.7.1 In the event that the primary observer has been unable to expose the candidate to any required category of evaluation, he or she shall advise the secondary observer of this fact, and shall include the fact in his quarterly report to the Board.

2.5.7.2 In the event that a preceptorship candidate receives a negative or deficient evaluation from his or her preceptor, in two or less of the above-described categories of evaluation, the Board shall allow the applicant to correct the deficiency or deficiencies by attendance at and completion of a course or program in each said deficient area. Said program or course shall have prior written approval by the Board. Upon successful completion of all such approved programs, the Board shall forthwith issue to the candidate a letter indicating that he or she may proceed with his preceptorship program.

2.5.7.3 In the event that a preceptorship candidate receives a negative or deficient evaluation from his or her preceptor, in more than two of the above-described categories of evaluation, the candidate may request another Delaware licensed podiatrist to independently evaluate the candidate's competency in those areas and report to the Board. The Board will review all evaluations and make a determination as to the status of the preceptorship.

Statutory authority: 24 Del.C. §§508(a)(2)

3.0 EXAMINATIONS

3.1 Examination. Pursuant to 24 Del. C. §508 and 509, applicants for licensure must have taken an approved national examination and achieved the minimum passing score recommended by the testing service providing the examination. The approved national examination is the PMLexis administered by the National Board of Podiatry Medical Examiners (NBPME).

3.2 An applicant for licensure is required to have successfully completed the NBPME Part I and Part II exams as a prerequisite to sitting for the PMLexis.

3.3 An applicant for licensure shall, prior to sitting for the examination, notify the testing service administering the PMLexis to forward his or her examination results directly to the Board. Failure to do so may constitute grounds for denial of licensure.

Statutory authority: 24 Del.C. §506(a)(3); 509.

4.0 RECIPROCITY

4.1 In addition to other requirements for licensure by reciprocity set forth in 24 Del. C. §510, the Board may only approve licensure by reciprocity where said applicants are currently licensed in other state(s) whose requirements for registration or certification are substantially similar to those of the State of Delaware, or as set forth in Rules 4.3 and 4.4, below. Equivalency shall be determined by comparing the laws in effect at the time of application. Prior to issuing a license by reciprocity, the Board will determine whether said

applicants have ever been disciplined or whether there are any disciplinary actions pending in any jurisdiction.

4.2 Requirements for registration and certification, as they relate to states other than Delaware, are deemed by the Board to be substantially similar to those of the State of Delaware when said requirements include:

4.2.1 Satisfactory completion of a degree of Doctor of Podiatric Medicine or its equivalent from a school currently accredited by the APMA or its successor;

4.2.2 Satisfactory completion of the NBPME Part I, Part II and PMLexis examinations, with at least the minimum passing score recommended by the testing service providing the examination; and;

4.2.3 Satisfactory completion of a hospital residency program approved by the American Podiatric Medical Association (APMA), or completion of an approved preceptorship program in the office of a podiatrist, licensed in the state in which the applicant is licensed or certified, for a period of one year.

4.3 An applicant licensed in a state whose standards for licensure are not substantially similar to those of Delaware may obtain licensure by reciprocity if he or she holds a license in good standing in that state and has practiced podiatry for a minimum of five years after licensure.

4.4 An applicant for licensure by reciprocity, who is licensed in a state whose standards are not substantially similar to those of this state, must provide the Board with an affidavit from his or her employer(s) in the state of licensure, or other evidence acceptable to the Board, documenting at least five (5) years of practice following licensure in that state.

Statutory authority: 24 Del.C. §510.

5.0 LICENSES (RENEWAL, INACTIVE, TEMPORARY)

5.1 Renewal/Lapse

5.1.1 Any licensee whose license lapses for non-renewal may re-apply within one (1) year by paying the fee required by 24 Del. C. §511 and having completed all continuing education which a licensee would have been required to complete for renewal.

5.1.2 If a licensee allows his or her license to lapse for over one year and has not been granted inactive status, that licensee must reapply for licensure in the same manner as a new applicant.

5.1.3 It shall be the responsibility of all licensees, active or inactive, to keep the Board informed of any change in name, home or business address.

5.2 Inactive Status

5.2.1 A licensee may be placed in an inactive status by the Board for a period of no more than five years. Requests for inactive status shall be made, in writing, to the Board and requests which exceed one year shall be renewed biennially at the time of regular license renewals, set by the

Division. Upon application to the Board and payment of a renewal fee, an inactive licensee may obtain a new license and re-enter active practice upon completion of the continuing education requirements below. The following continuing education must be completed prior to the licensee reentering active practice:

5.2.1.1 Inactive status for one year or less: 16 CE hours.

5.2.1.2 Inactive status for more than one year up to 5 years: 32 CE hours, completed within 24 months prior to reapplication.

Statutory authority: 24 Del.C. §512.

5.3 Temporary License. In the case of a temporary license issued to a qualified applicant for licensure in this state pending the results of the PMLexis examination, it is the duty of the applicant to inform the Board of his or her examination results immediately upon their receipt.

Statutory authority: 24 Del.C. §513.

6.0 CONTINUING EDUCATION

6.1 Pursuant to 24 Del. C. §506(a)(7), the Board is empowered to provide by rule for continuing medical education. "Continuing medical education (CME)," as that term is herein applied by the Board, includes any and all continuing education requirements, as herein below provided, which must be satisfied biennially by all licensed practitioners as a condition for licensure renewal. Each licensed practitioner shall complete, biennially, at least 32 hours of continuing education as a condition of license renewal.

6.2 Each practitioner shall be exempt from the continuing education requirement in the first biennial licensing period, or any portion thereof, in which he is licensed to practice in Delaware. On or before the last day in April every two (2) years, each practitioner shall submit to the Board validated documents which evidence satisfactory completion of the continuing education requirements for the previous two (2) years. Each licensee must complete a Podiatry CME log, on a form to be supplied by the Board, indicating the date, title, sponsor, and number of hours the licensee attended, for each continuing education program submitted for credit. The Board reserves the right to request additional documentation, such as copies of program materials, to verify CME compliance.

6.3 Only approved courses will be counted toward the 32 hour biennial continuing education requirement. A practitioner may gain approval of any course or program by written application to the Board, stating the title, sponsor and summary of course content. The Board may act upon all such requests at the next regularly scheduled meeting, may act upon such requests at any intervening special meeting convened to consider other issues, or may delegate to any member of the Board the authority to approve continuing education courses on behalf of the Board. Any practitioner

who attends and/or completes a course which has not yet been approved by the Board does so at his own risk that the Board may not approve the said course nor allow it to be counted toward completion of the annual requirement of 32 hours of continuing education.

6.4 Content. The overriding consideration in determining if a specific program qualifies for continuing professional education is that it be a formal program of learning which contributes directly to the professional competence of the licensee. No credit shall be given for business or practice seminars.

6.4.1 Computer, television or video based courses and other independent study courses may be submitted to the Board for approval, however no such course will be approved for credit unless it includes successful completion of a final examination or paper.

6.4.2 The following programs will be deemed to qualify for continuing education without prior Board approval:

6.4.2.1 Any program approved by the American Podiatric Medical Association (APMA), and approved affiliates.

6.4.2.2 Any seminar sponsored by the Delaware Podiatric Medical Association (DMPA).

6.4.2.3 Any podiatric program sponsored by a hospital or clinic as part of a CPME approved residency program.

6.5 Hardship. The Board has the authority to make exceptions to the continuing professional education requirements upon written request of the licensee and a showing of good cause. "Good cause" may include, but is not limited to, disability, illness, military service, foreign residency, and retirement. Upon application, the Board shall set the time in which the licensee must complete the continuing education requirement. No extension shall be granted for more than 120 days after the end of the licensing period.

6.6 Self-directed activity

6.6.1 The Board may, upon request, review and approve credit for self-directed activities, including research, preparation and/or presentation of professional papers and articles, to a maximum of eight (8) hours per biennial licensing period. **A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity.** Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.6.2 The Board may award up to a maximum of

eight (8) continuing education hours for the first-time preparation and presentation of an approved podiatric clinical course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

Statutory authority: 24 Del.C. §§506(a)(7).

7.0 DISCIPLINARY PROCEEDINGS AND HEARINGS

7.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 Del. C. §§807(h)(1)-(3).

7.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

7.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

7.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

7.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 Del. C. Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

7.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

7.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

7.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29

Del.C. §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 Del.C. §§514 and 517; 29 Del.C. §§10111, 10122 and 10131

7.2. Hearing procedures

7.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

7.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

7.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

7.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

7.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 Del.C. §515.

Statutory authority: 24 Del.C. §§514, 515, 517; 29 Del.C. §§10111

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days

following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

8.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

8.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

8.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary

proceedings as appropriate.

8.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DIVISION OF PROFESSIONAL REGULATION REAL ESTATE COMMISSION

Statutory Authority: 24 Delaware Code,
Section 2905(a)(1) (24 Del.C. 2905(a)(1))

The Delaware Real Estate Commission, in accordance with 24 Del.C. §2905(a)(1) and 29 Del.C. §10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on August 10, 2000 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

The Commission shall receive input in writing or by oral testimony from interested persons regarding the following revision of the Rules and Regulations: Rule 5.2. (Escrow Accounts). Add sentence specifying that a licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

The final date for interested persons to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral or written comments or who would like a copy of the proposed change may contact the Commission office at 302-739-4522, extension 219, or write to the Delaware Real Estate Commission, 861 Silver Lake Boulevard Suite 203, Dover, DE 19904-2467.

Real Estate Commission Statutory Authority: 24 Del.C. 2905

- 1.0 Introduction
- 2.0 Requirements for Obtaining a Salesperson's License
- 3.0 Requirements for Obtaining a Real Estate Broker's License
- 4.0 Reciprocal Licenses
- 5.0 Escrow Accounts
- 6.0 Transfer of Broker or Salesperson
- 7.0 Business Transactions and Practices

- 8.0 Renewal of Licenses
- 9.0 Availability of Rules and Regulations
- 10.0 Disclosure
- 11.0 Hearings
- 12.0 Inducements
- 13.0 Necessity of License
- 14.0 Out of State Land Sales Applications
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Introduction

1.1 Authority

1.1.1 Pursuant to 24 Del.C. §2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

1.1.2 The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

1.1.3 The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 Del.C. Ch. 29.

1.2 Applicability

1.2.1 The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

1.3 Responsibility

1.3.1 It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to meet that responsibility may result in a civil fine against the broker of up to \$ 1,000.00 per agent.

1.3.2 Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness,

call to military service or training, or a sanction imposed by the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

1.1.3 The failure of any licensee to comply with the Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's and/or salesperson's license.

2.0 Requirements for Obtaining a Salesperson's License

The Commission shall consider any applicant who has successfully completed the following:

2.1 Course

2.1.1 The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2.1.2 Effective May 1, 1978, all real estate courses shall be limited to thirty-five (35) students in each class. This applies to both day and night courses. All other regulations regarding real estate courses are issued under the "Guidelines for Fulfilling the Delaware Real Estate Education Requirements". The Commission reserves the right to grant exception to this limitation.

2.2 Examination

2.2.1 Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must forward all necessary documentation to the Commission to be considered for licensure.

2.2.2 An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

2.3 Ability to conduct business

2.3.1 The Commission reserves the right to reject an applicant based on his or her inability to transact real estate business in a competent manner or if it determines that the applicant lacks a reputation for honesty, truthfulness and fair dealings.

2.3.2 The minimum age at which a salesperson's license can be issued is eighteen (18).

2.4 Fees

The Commission shall not consider an application for a

salesperson's license unless such application is submitted with evidence of payment of the following fees:

2.4.1 Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

3.0 Requirements for Obtaining a Real Estate Broker's License

The Commission shall consider the application of any person for a broker's license upon completion of the following:

3.1 Course

3.1.1 The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

3.1.2 Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

3.2 Experience

3.2.1 A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license.

3.2.2 The applicant shall submit to the Commission a list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3.2.3 The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

3.3 Examination

3.3.1 Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by Paragraph E of this rule to the Commission to be considered for licensure.

3.4 Ability to conduct business

3.4.1 The Commission reserves the right to reject an applicant based on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience, a reputation for honesty, truthfulness and fair dealings.

3.4.2 The minimum age at which a person can be issued a broker's license is twenty-three (23).

3.5 Credit Report

3.5.1 Each applicant shall submit a credit report from an approved credit reporting agency, which report shall be made directly to the Commission.

3.6 Fees

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

3.6.1 Broker's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

4.0 Reciprocal Licenses

4.1 Requirements

4.1.1 A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a nonresident broker's license under 24 Del.C. §2909(a).

4.1.2 A non-resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a broker's license issued by the Commission.

4.1.3 The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules 2.2 or 3.3 provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.

5.0 Escrow Accounts

5.1 All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

5.2 All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker. A licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check of draft that is postdated.

5.3 A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

5.4 A broker shall maintain in his office a complete record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

5.5 An escrow account must be opened by the broker in a bank with an office located in Delaware in order to receive, maintain or renew a valid license.

5.6 The Commission may summarily suspend the license of any broker who fails to comply with 5.4, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

5.7 Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

6.0 Transfer of Broker or Salesperson

6.1 All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

6.2 The Commission reserves the right to waive this requirement upon a determination of good cause.

6.3 All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

7.0 Business Transactions and Practices

7.1 Written Listing Agreements

7.1.1 Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

7.2 Copy of agreements

7.2.1 Every party to a listing agreement, agreement of purchase and sale, or lease shall be furnished with an executed copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

7.3 Advertising

7.3.1 Any licensee who advertises, on signs,

newspapers or any other media, property personally owned and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee.

7.3.2 Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the -broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs.

7.3.3 Any licensee who advertises, by signs, newspaper, or any other media, any property for sale, lease, exchange, or transfer that is listed with a broker must include in the advertisement the name of the broker under whom the licensee is licensed.

7.3.4 All advertisements for personal promotion of licensees must include the name of the company under whom the licensee is licensed.

7.4 Separate Office

7.4.1 Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. Nothing contained herein, however, shall preclude said persons from sharing facilities with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

7.4.2 Where the office is located in a private home, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed, in a conspicuous location.

7.5 Compensation

7.5.1 Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

7.5.2 When acting as agent, a licensee shall not accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

7.6 Duty to Cooperate

7.6.1 Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions or to otherwise compensate another broker or salesperson.

8.0 Renewal of Licenses

8.1 Renewal Required by Expiration Date on License

8.1.1 In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall

have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

8.2 Delinquency Fee

8.2.1 If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.

8.2.2 Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.

8.3 Reinstatement of License

8.3.1 A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date, the licensee shall be required to take the state portion of the examination. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

8.3.2 No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

9.0 Availability of Rules and Regulations

9.1 Fee Charge for Primers

9.1.1 Since licensees are required to conform to the

Commission's Rules and Regulations and the Laws of the State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

10.0 Disclosure

10.1 A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to all persons with whom he or she is transacting such business, prior to the execution of any agreements and shall include on the agreement such status.

10.2 Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will buy your home", or words to that effect, shall disclose in the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

10.3 A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

10.3.1 The written confirmation of disclosure in the contract shall be worded as follows:

10.3.1.1 With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

10.3.1.2 With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary

responsibilities to the buyer, but is obligated to treat all parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

10.3.1.3 In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

10.4 If a property is the subject of an agreement of sale but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

11.0 Hearings

11.1 When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

11.2 There shall be a maximum of one (1) postponement for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission reserves the right to act based upon the evidence presented.

12.0 Inducements

12.1 Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to Non-licensed Persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

12.2 This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

12.3 A real estate broker or salesperson has an affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the buyer.

13.0 Necessity of License

13.1 For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That

licensee may be assisted by non-licensed persons provided a licensee is on site. This subsection shall not prohibit a seller from showing their own house.

13.2 For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

14.0 Out of State Land Sales Applications

14.1 All applications for registration of an out of state land sale must include the following:

14.1.1 A completed license application on the form provided by the Commission.

14.1.2 A \$100 filing fee made payable to the State of Delaware.

14.1.3 A valid Business License issued by the State of Delaware, Division of Revenue.

14.1.4 A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of State and a letter identifying the applicant's registered agent in the State of Delaware.

14.1.5 The name and address of the applicant's resident broker in Delaware and a completed Consent of Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.

14.1.6 A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.

14.1.7 Copies of any agreements or contracts to be utilized in transactions completed pursuant to the registration.

14.2 Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 14.1.2 through 14.1.4 of Rule 14.0 above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

14.3 If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or

units or the like to the development, then the applicant must, within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment

Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

15.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

15.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice

as outlined in the agreement under the Voluntary Treatment Option.

15.6.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

15.6.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

15.6.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

15.6.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

15.6.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

15.6.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DIVISION OF PROFESSIONAL REGULATION
GAMING CONTROL BOARD

Statutory Authority: 28 Delaware Code,
Section 1503 (28 Del.C. 1503)

The Board proposes a new section 1.03(10) to the existing Bingo Regulations. The amendment would require the bingo applicant to provide full and fair description of the prize to be awarded and appraised value of the prize. The amendment would also permit the Board to require an

independent appraisal of the prize.

Copies of the existing Bingo Regulations and the proposed regulation as amended are attached. The public may obtain copies of the proposed regulations from the Delaware Gaming Control Board, Division of Professional Regulation, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE 19904. The contact person at the Board is Denise Spear and she can be contacted at (302) 739-4522 ext. 202. The Board will accept written comments from the public beginning June 1, 2000 until July 5, 2000. Written comments can be sent to the Delaware Gaming Control Board, Division of Professional Regulation, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE 19904. A public hearing will be held at the Delaware Gaming Control Board, 2nd Floor Conference Room, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE on July 6, 2000 at 12:00 p.m. The public may present comments at the public hearing.

1.03 Bingo Licenses

(1) Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.

(2) The Board may issue a license only after it determines that:

(i) The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.

(ii) The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.

(iii) The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.

(iv) The proceeds are to be disposed of as provided in the State Constitution and statutes.

(v) No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.

(3) The license shall be issued in triplicate. The original thereof shall be transmitted to the applicant. Two copies shall be retained by the Commission for its files.

(4) If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees

submitted.

(5) In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.

(6) No license shall be effective for a period of more than one year from the date it was issued.

(7) No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.

(8) No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.

(9) No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July, 14, 1998 whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998).

(10) The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. 122(d))

*** PLEASE NOTE: THE FOLLOWING PROPOSED REGULATORY CHANGES WILL BE CONSIDERED AT THE MONTHLY MEETING OF THE STATE BOARD OF EDUCATION ON THURSDAY, JUNE 15, 2000 AT 2:00 P.M.**

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

CONTENT STANDARDS

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulation Content Standards, and repeal as separate regulations Agriscience, Business Finance and Marketing, Foreign Languages and Visual and Performing Arts. The purpose of these changes is to consolidate the specific content standards with the generic content standards regulation and to add to this generic regulation the four sets of content standards approved in September, 1995, English language arts, mathematics, science and social studies and technology education approved in March 2000. The amended regulation Content Standards would include the statements made in the current regulation and include all of the approved sets of content standards in one regulation. The five content areas that require development and implementation only if offered by the local district are addressed separately. In addition, the amendments add the requirement that local school districts develop and implement the content standards for the functional life skills curriculum for students for whom that curriculum is appropriate. The *Standards for Functional Life Skills Curriculum* document is scheduled for State Board discussion in May with final approval in June 2000. In the future the Secretary and the State Board of Education would add additional content standards to this regulation when they are approved and would approve all changes to the existing content standards.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards?

The amended regulation consolidates the current regulations into a single regulation on content standards and adds the content standards for the functional life skills

curriculum.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation addresses content standards, not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation addresses content standards, not student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected?

The amended regulation addresses content standards, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation?

There is not a less burdensome method for addressing the purpose of this amended regulation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no additional cost to the state and to the local school boards of compliance with the amended regulation.

AS APPEARS IN THE REGULATIONS OF THE DEPARTMENT OF EDUCATION

Content Standards

~~1.0 Each school district shall develop and implement instructional programs for grades K-12 in alignment with the State Content Standards. Districts shall also provide for the integration of content areas within and across curricula. Districts shall keep instructional materials and curricula current and consistent with the Guidelines and Standards adopted by the State Department of Education and any subsequent amendments thereof.~~

~~Standards for Agriscience
(See document for full text)~~

~~Standards for Business, Finance and Marketing
(See document for full text)~~

~~Standards for Foreign Languages
(See document for full text)~~

~~Standards for Visual and Performing Arts
(See document for full text)~~

AS AMENDED

State Content Standards

1.0 State Content Standards

1.1 Each local school district shall develop and implement instructional programs for grades K-12 in alignment with the state content standards in mathematics, English language arts, science and social studies. The same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.2 Each local school district shall develop and implement instructional programs in visual and performing arts in grades K-8 and in technology education in Grades 5-8 in alignment with the state content standards in those areas. The same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.3 Each local school district shall develop and implement instructional programs for students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Standards for Functional Life Skills Curriculum*. The same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.4 Local school districts that develop and implement instructional programs for agriscience, business finance and marketing, foreign language and for visual and performing

arts and technology education in those grades not referred to in 1.2 shall align such programs with the state content standards in these areas. The same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.5 Local school districts shall provide for the integration of content areas within and across the curricula.

1.6 Local school districts shall keep instructional materials and curricula content current and consistent with the guidelines and standards adopted by the State Department of Education and any subsequent amendments thereof.

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

BILINGUAL TEACHER (SPANISH) PRIMARY/ MIDDLE LEVEL AND BILINGUAL TEACHER (SPANISH) SECONDARY

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulations

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks the approval of the State Board of Education to amend the regulations for certification as a Bilingual Teacher (Spanish) Primary/Middle Level and as a Bilingual Teacher (Spanish) Secondary. The purpose of the amendment is to allow persons who are native Spanish speakers to become candidates for certification. Sections 2.1.1.2 and 2.1.2 reflect these changes. The regulation was also changed to fit the revised format of Department of Education regulations.

C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations do address certification requirements that can have an impact on student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations address certification requirements, not equitable education except that bilingual education teachers do assist in the delivery of equitable education for all students.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address certification requirements, not health and safety issues.

4. Will the amended regulations help to ensure that all

students' legal rights are respected?

The amended regulations address certification requirements, not students' legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level?

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will be consistent with and not impediments to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulations?

Certification requirements must be regulated by the Department of Education.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

There is no additional cost to the state and to the local school boards for compliance with these regulations.

CURRENT REGULATION

SECONDARY TEACHER BILINGUAL

Required in grades 9-12, valid in grades 5-8 in a middle level school.

I. Requirements for the Standard License

A. Bachelor's degree from an accredited college; and

B. Professional Education

1. Completion of a teacher preparation program

~~in secondary education bilingual in the language area of assignment and the subject area of assignment;~~

~~-OR-~~

~~2. Completion of a major in the subject area of assignment; and~~

~~a. Minimum of 21 semester hours in the language area of assignment at or above the intermediate level;~~

~~-OR-~~

~~Demonstrated fluency in the language area of assignment as determined by a DOE approved proficiency test;~~

~~-AND-~~

~~b. Three semester hours in Teaching English as a Second Language;~~

~~-AND-~~

~~e. Knowledge of the target group's culture as demonstrated by:~~

~~Three semester hours credit in the culture of the target group;~~

~~-OR-~~

~~Significant personal connection with the target community such as formative or work experience;~~

~~-OR-~~

~~An appropriate workshop approved by the Department of Education in the target group's culture;~~

~~-AND-~~

~~d. Bilingual student teaching in a secondary school program in the language area of assignment.~~

II. Requirements for the Limited Standard License (not renewable)

~~Issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as a bilingual secondary teacher to allow for the completion of the requirements of the standard License as listed under Section I. above.~~

~~A. Requirements of I. A. above; and~~

~~B. Specialized Professional Preparation~~

~~Coursework as required in I. B. 2a, b, and c. (Student teaching may be satisfied by one year of satisfactory teaching experience in a secondary bilingual school program in the language area of assignment.)~~

~~***~~

LICENSES ISSUED FOR THIS POSITION

Standard See above.

Limited Standard See above.

Effective May 20, 1994

DELAWARE
STATE DEPARTMENT OF EDUCATION
CERTIFICATION OF PROFESSIONAL PUBLIC
SCHOOL PERSONNEL

~~PRIMARY/MIDDLE LEVEL TEACHER – BILINGUAL~~

Required in grades K-4, and middle level grades 5-8.

- I. ~~Requirements for the Standard License~~
- ~~A. Bachelor's degree from an accredited college; and~~
 - ~~B. General Education~~
~~Satisfactory completion of the Bachelor's degree;~~
- and
- ~~C. Professional Education~~
 - ~~1. Completion of a teacher education program in primary/middle level bilingual education in the language area of assignment~~
 - ~~-OR-~~
 - ~~2. Completion of the required course work in a teacher education program in primary or middle level education; and~~
 - ~~a. Minimum of 15 semester hours in the language area of assignment at or above the intermediate level (300);~~
 - ~~-OR-~~
 - ~~Demonstrated fluency in the language area of assignment as determined by the NTE (score at or above fiftieth percentile)~~
 - ~~-AND-~~
 - ~~b. 3 semester hours in Teaching English as a Second Language~~
~~3 semester hours Second Language Testing~~
 - ~~-AND-~~
 - ~~e. Knowledge of the target group's culture as demonstrated by:~~
~~Three semester hours credit in the culture of the target group~~
 - ~~-OR-~~
 - ~~Documented personal interaction with the target community, e.g., study abroad, work experience, formative experience.~~
 - ~~d. Bilingual student teaching in the area of assignment~~
 - ~~-OR-~~
 - ~~Student teaching at K-8 level; and~~
~~One year of approved full-time successful experience teaching in a primary/middle level bilingual program~~

- H. ~~Requirements for the Limited Standard License (not renewable)~~
~~Issued for a period of three years at the request of a~~

Delaware public school district to a person who meets the requirements listed below and who is employed as a bilingual elementary teacher to allow for the completion of the requirements of the standard License as listed under Section I. above.

- ~~A. Requirements of I. A. and I. B. above; and~~
- ~~B. Specialized Professional Preparation~~
~~Requirements as specified in I. C. 2a, b, and c.~~

~~LICENSES FOR THIS POSITION~~

~~Standard See above~~
~~Limited Standard See above~~

~~AS AMENDED~~
~~BILINGUAL TEACHER (SPANISH) PRIMARY/
MIDDLE LEVEL~~

1.0 To qualify for a Standard License to teach in K-8 Bilingual Education Programs a candidate shall have a Bachelor's degree from a regionally accredited college and have completed a teacher education program in elementary, primary or middle level (grade configurations K-8) bilingual education in the language area of Spanish.

2.0 If the candidate does not meet the requirements in 1.0 the following shall apply:

2.1 Complete the required coursework in a teacher education program in elementary, primary or middle level (grade configurations K-8) regular education plus provide the following:

2.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

2.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This coursework shall be at or above the intermediate level; and

Demonstration of oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Module: Productive Language (0192); or

2.1.1.2 Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Modules:

Spanish: Content and Knowledge (0191)

and
Spanish: Productive Language (0192);

and
2.1.2 Demonstration of English speaking ability, when English is not the first language, by meeting appropriate qualifying scores on the TOEFL: Test of Spoken English (TSE) and

2.1.3 In addition to 2.1.1 and 2.1.2 all candidates must meet the following requirements:

2.1.3.1 Completion of coursework as indicated:

2.1.3.1.1 3 semester hours Methods of Teaching English as a Second Language;

2.1.3.1.2 3 semester hours Second Language Testing;

2.1.3.1.3 3 semester hours Remedial Reading (English); or 3 semester hours Remedial Reading (Spanish); and

2.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

2.1.3.2.1 A three (3) semester hour course in Spanish culture; or Documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.; and

2.1.3.3 Completion of a clinical experience in a bilingual setting in grades K-8; or upon the completion of all requirements in 2.0, verification of one year of prior approved, full-time, successful, experience teaching in a primary, intermediate, or middle level bilingual Spanish program, "in lieu of student teaching."

3.0 To qualify for a Limited Standard (2 year certificate) the candidate shall have a bachelor's degree from a regionally accredited college and be eligible to hold an elementary, primary or middle level certificate (K-8 configuration) in regular education.

3.1 A person needing 6 semester hours of intermediate Spanish shall complete all appropriate Spanish coursework (15 semester hours) and the test of oral Language proficiency PRAXIS I (0192) Test Module(s) within the two years of the Limited Standard. If English Speaking ability must be demonstrated, the TOEFL Test of Spoken English (TSE) would need to be completed within this same two-year period.

3.2 A person needing to demonstrate only language proficiency shall demonstrate such within the two years of the Limited Standard. Language proficiency shall be demonstrated via the PRAXIS II Test Module(s) #0191 and #0192 and the TOEFL Test of Spoken English (TSE) if English is the second language.

3.3 Once the requirements in 2.1.1 and 2.1.2 have been met, a Limited Standard may be issued for one additional year in order to complete the requirements in 2.1.3.

BILINGUAL TEACHER (SPANISH) SECONDARY

1.0 To qualify for a Standard License to teach in Secondary Bilingual Education Programs a candidate shall have a Bachelor's degree from a regionally accredited college and have completed a teacher education program in bilingual education at the secondary level (grades 7-12) in

the language area of Spanish.

2.0 If the candidate does not meet the requirements in 1.0 the following shall apply:

2.1 Complete the required coursework in a teacher education program at the secondary level (grades 7-12) in a content area such as biology, English or special education plus the following:

2.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

2.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This coursework shall be at or above the intermediate level; and

Demonstration of oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Module: Productive Language (0192); or

2.1.1.2 Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Modules:

Spanish: Content and Knowledge (0191) and

Spanish: Productive Language (0192); and

2.1.2 Demonstration of English speaking ability, when English is not the first language, by meeting appropriate qualifying scores on the TOEFL: Test of Spoken English (TSE) and

2.1.3 In addition to 2.1.1 and 2.1.2 all candidates must meet the following requirements:

2.1.3.1 Completion of coursework as indicated:

2.1.3.1.1 3 semester hours Methods of Teaching English as a Second Language;

2.1.3.1.2 3 semester hours Second Language Testing;

2.1.3.1.3 3 semester hours Remedial Reading (English); or 3 semester hours Remedial Reading (Spanish); and

2.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

2.1.3.2.1 A three (3) semester hour course in Spanish culture; or documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.; and

2.1.3.3 Completion of a clinical experience in a bilingual setting in grades 7-12; or upon the completion of all requirements in 2.0, verification of one year of prior approved, full-time, successful, experience teaching in a secondary level bilingual Spanish program, "in lieu of student teaching."

3.0 To qualify for a Limited Standard (2 year certificate) the candidate shall have a bachelor's degree from

a regionally accredited college and be eligible to hold a secondary certificate in the content area to which they are assigned to teach bilingual students (math, science, special education, social studies, etc.)

3.1 A person needing 6 semester hours of intermediate Spanish shall complete all appropriate Spanish coursework (15 semester hours) and the test of oral Language proficiency PRAXIS I Test Module #0192 within the two years of the Limited Standard. If English Speaking ability must be demonstrated, the TOEFL Test of Spoken English (TSE) would need to be completed within this same two-year period.

3.2 A person needing to demonstrate only language proficiency shall demonstrate such within the two years of the Limited Standard. Language proficiency shall be demonstrated via the PRAXIS II Test Module(s) #0191 and #0192 and the TOEFL Test of Spoken English (TSE) if English is the second language.

3.3 Once the requirements in 2.1.1 and 2.1.2 have been met, a Limited Standard may be issued for one additional year in order to complete the requirements in 2.1.3.

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

SUPPORTIVE INSTRUCTION (HOMEBOUND)

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulation Supportive Instruction (Homebound) pages A-11 to A-13 in the *Handbook for K-12 Education*. The regulation has been amended to specify when services can begin for pregnant students who qualify, to address the issue of students with 504 plans and to update and clarify the language. The amended regulation also removes the cap on the number of hours of supportive instruction that can be provided at each grade level leaving only a minimum requirement. Local school districts may provide additional hours of supportive instruction from their academic excellence allotment or from other available funding sources.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards?

The amended regulation will provide additional academic support to homebound students.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation addresses supportive instructional services, which could be interpreted as a type of equity issue.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation addresses supportive instruction, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected?

The amended regulation addresses supportive instruction, not student's rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

Decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation?

The regulation is needed to insure that these services are available and amending the regulation is needed for clarity and focus.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no additional cost to the state or to the local school boards for compliance with this amended regulation.

FROM THE HANDBOOK FOR K-12 EDUCATION

I.E.2. SUPPORTIVE INSTRUCTION (HOMEBOUND)-

a. Definition

Supportive instruction is an alternative educational program provided at home, hospital or related site. For non-handicapped students hospitalized or at home for a sudden illness or accident considered to be of a temporary nature, procedures for eligibility shall be limited to medical certification that the student cannot attend school. For handicapped students, services shall be provided according to the Administrative Manual: Programs for Exceptional Children, and shall be processed under the district's special education authority.

b. Eligibility

To be eligible for supportive instruction as a non-handicapped student, the student shall be enrolled in the local school district and:

(1) if absence is due to a medical condition, be certified by a physician's statement where absence will be for two weeks or longer; or

(2) if absence is necessary due to severe adjustment problems, be certified by a staff conference, including a psychologist or psychiatrist; or

(3) if for transitional in-school program, be certified by staff conference.

e. Pregnancy complicated by illness or other abnormal conditions as certified by a physician may be considered a valid reason for supportive instruction; however, a normal pregnancy is considered a condition for which other State supported instructional programs administered by local districts should be adequate.

d. Implementation

Supportive instruction for non-handicapped students will begin as soon as administratively feasible and may continue upon return to school only in those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program. Such unusual cases shall be referred to the Department of Public Instruction, for approval.

(1) The following weekly schedule of hours of instruction will be supported by State funds to the extent that appropriations allow:

Out of School

Grades K-5 Minimum 3 hours Maximum 5 hours

Grades 6-8 Minimum 5 hours Maximum 7 hours

Grades 9-12 Minimum 5 hours Maximum 10 hours

In School

Grades K-12 No minimum Maximum 3 hours

(2) State funded instruction shall not exceed three visits per week. Summer instruction is permitted for a student who, as determined by the student's teachers and principal, needs the instruction to complete course work or

to maintain a level of instruction in order to continue in a school program the following September.

(3) A home to school telephone instructional system may be provided when economically feasible and educationally advisable as determined by the local district administration. Negotiations for installation, removal, and costs shall be between the telephone company and the local school district. (Payable from allocations for homebound instruction.) When a home to school telephone instructional system is provided, the coordinating teacher at the elementary level, or, in the case of departmentalized instruction, the teacher of each basic subject area may be authorized to visit the home for one hour per week to give assistance.

(4) The student's curriculum shall be followed to the maximum extent possible.

(5) When a student is in a departmentalized program, more than one teacher may be assigned.

(6) Teachers providing home, hospital, and/or supportive instruction for a student shall be paid no less than the minimum hourly rate as set by the Department of Public Instruction.

(7) A specific amount is allocated to each district for operation of this program, but nothing in these regulations shall be construed to prevent a local school district from providing additional hours of instruction, or paying a higher hourly rate for teachers' services so long as the extension of services is supported by local or Division III funds. Summer instruction may be provided with State funds, subject to the availability of funds and approval by the Department of Public Instruction. Funds for teacher travel in the provision of home, hospital, or supportive instruction are to be provided by the local school district subject to reimbursement annually upon request to the Department of Public Instruction

AS AMENDED

SUPPORTIVE INSTRUCTION (HOMEBOUND)

1.0 Definition: Supportive instruction is an alternative educational program provided at home, in a hospital or at a related site for students temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature.

1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.

1.2 Services for children with disabilities as defined in the Individuals with Disabilities Act (IDEA) and the State Department of Education's regulations on Children with Disabilities shall be provided according to the *Administrative Manual: Special Education Services*, and shall be processed under the district's special education

authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and the Administrative Manual.

1.3 Nothing in this regulation shall alter a district's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

2.0 Eligibility: A student enrolled in a school district is eligible for supportive instruction when the school receives the required certification that an accident, injury, sudden illness or episodic flareup of a chronic condition will prevent the student from attending school for at least ten (10) school days.

2.1 A physician must certify absences due to a medical condition.

2.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.

2.3 A physician must certify absences due to pregnancy complicated by illness or other abnormal conditions.

2.3.1 Students do not qualify for supportive instruction for normal pregnancies unless there are complications.

2.3.2 Students who remain enrolled in school are eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician.

2.4 When the request for supportive instruction is for transitional in-school programs immediately following supportive instruction provided outside school, the request must be certified through a staff conference.

3.0 Implementation: Supportive instruction for students shall begin as soon as the certification required by 2.0 is received and may continue upon return to school only in those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program as in 2.4.

3.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

3.1.1 The school shall provide a minimum of 3 hours of supportive instruction for students K-5th grade, and a minimum of five hours for students, 6-12th grade. There is no minimum for in-school transition.

3.1.2 Nothing in this regulation shall prevent a school district from providing additional hours of supportive instruction to eligible students from either its Academic Excellence allotment or other available funding

sources.

3.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school program the following school year.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

Statutory Authority: 29 Delaware Code,
Section 6081(j) (29 **Del.C.** 6081(j))

PROPOSED TECHNICAL INFORMATION

MEMORANDUM 2000-2

DATE: May 15, 2000
**SUBJECT: DUTY TO REPORT SALES OF
CIGARETTE PRODUCTS MADE BY
NON PARTICIPATING
MANUFACTURERS**

AUTHORITY: These regulations are proposed pursuant to the authority given the Department of Finance in 29 **Del.C.** § 6081(j).

COMMENTS: Public Comments will be received for 30 days from the date of the issuance of this proposed regulation and they may be submitted to Jos. Patrick Hurley Jr., Division of Revenue, 820 N. French Street, Wilmington, DE 19801. Telephone (302) 577-8685.

PROPOSED REGULATION:

Each affixing agent licensed under Chapter 53 of Title 30 of the Delaware Code shall report to the Division of Revenue monthly the total number of cigarettes stamped which are manufactured by tobacco product manufacturers defined in 29 **Del.C.** §6081(i) that are not participating manufacturers within the meaning of 29 **Del.C.** §6082(1). If an affixing agent has not stamped any cigarettes manufactured by a non-participating manufacturer in a reporting period, a negative report of no stamping shall be filed. The reports shall be made on schedule NPM-CIG and attached to forms 1074 or 1075. Schedule NPM-CIG as proposed is attached to this regulation.

Each resident and non-resident distributor of Other Tobacco Products who is required by Division of Revenue regulations to assess and report the tax on such other tobacco products shall report to the Division of Revenue monthly the amount of "roll your own" tobacco manufactured by tobacco product manufacturers defined in 29 **Del.C.** § 6081(i) that

PROPOSED REGULATIONS

are not participating manufacturers within the meaning of 29 Del.C. § 6082 (1) that is sold, brought into, or caused to be brought into this State.

If a distributor has not assessed and reported any tax on "roll your own" tobacco manufactured by a non-participating manufacturer in a reporting period, a negative report of no tax assessed shall be filed. For purposes of this section "roll your own" tobacco is any tobacco which because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco used for making cigarettes. For purposes of this section "roll your own" tobacco may be reported as numbers of cigarettes, with 0.09 ounces of "roll your own" tobacco equaling 1 cigarette. The reports shall be made on schedule NPM-RYO and attached to form TP-1. Schedule NPM-RYO as proposed is attached to this regulation.

The reports required by this regulation shall be filed with the Division of Revenue on or before the 20th day of the month following the month in which the cigarettes are stamped, or the "roll your own" tobacco is sold, brought into, or caused to be brought into the State. Each report shall contain a verification that it is true and correct as to every material matter and made under the penalties of perjury. The first monthly report under this regulation shall be due on August 20, 2000, for the month of July, 2000.

Additionally, affixing agents and distributors subject to this regulation are required to file one report covering all cigarettes stamped; or all "roll your own" tobacco sold, brought into, or caused to be brought into this State, manufactured by non-participating manufacturers for the period July 20, 1999, through June 30, 2000. This report shall be made on schedule NPM-1999 and attached to forms 1074, 1075 or TP-1, as the case may be, for the month of July, 2000. Schedule NPM-1999 as proposed is attached to this regulation.

Participating tobacco manufacturers within the meaning of 29 Del. C. §6082 and for purposes of determining the reporting requirements of this regulation are those manufacturers identified in Exhibit A attached hereto and incorporated herein by reference. This list may be amended and republished from time to time if, as and when nonparticipating manufacturers become participating manufacturers. A current list of participating manufacturers may also be found on the Internet at <http://www.naag.org/tobac/spmcont.htm>.

William M. Remington
Director of Revenue

Approved as to form and legal sufficiency,
Drue Chichi, Esquire
Deputy Attorney General

**Schedule NPM-CIG (Proposed).
Sales of Cigarettes from Non-participating
Manufacturers or Importers**
(Attach to Delaware Division of Revenue
Forms 1074 and 1075)

Monthly Report of Cigarettes and Cigarette Tax Stamps

Taxpayer's Name	Taxpayer's Federal EIN or SSN	Report for Month of _____, 200__
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Include sales for the applicable manufacturers listed below. The report, however, is not to be limited to those manufacturers. If you have sold cigarettes from other non-participating manufacturers into Delaware, please identify those manufacturers or importers on this form. If you need additional space, please attach a separate sheet. If you sold no such items into Delaware, please check below:

**NO. NON-PARTICIPATING MANUFACTURER
PRODUCTS SOLD INTO DELAWARE:**

A NAME OF MANUFACTURER	B Quantity Packs of 20	C Quantity Packs of 25
1. Star Scientific, Inc.		
2. National Tobacco/North Atlantic Operating (Zig Zag)		
3. S & M Brands (Bailey's)		
4. Smokin' Joe / Alternative (Smokin' Joe's, Lewiston, Glory, Exact, Market, Pure)		
5. Gudang Garam TBK (Import)		
6. P T Bentoel Prima (Import)		
7. M/S Mangalore Ganesh Beedi Works (Import)		
8. Gunwantrai Harivallabh (Import)		
9.		
10.		
11.		
12.		
13.		
14.		

15.		
16.		
17.		
18.		
19.		
20.		
21. Total all packs of 20 cigarettes (Column B) and 25 Cigarettes (column C).		

5. Gudang Garam TBK (Import)		
6. P T Bentoel Prima (Import)		
7. M/S Mangalore Ganesh Beedi Works (Import)		
8. Gunwantrai Harivallabh (Import)		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21. Total cigarette equivalents (ColumnB)andounces(ColumnC).		

**Schedule NPM-RYO (Proposed).
Sales of Roll Your Own Tobacco from Non-participating
Manufacturers or Importers**
(Attach to Delaware Division of Revenue Form TP-1)
Monthly Report of Tobacco Products Tax
(Other than Cigarettes)

Taxpayer's Name	Taxpayer's Federal EIN or SSN	Report for Month of _____, 200__
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Include sales for the applicable manufacturers listed below. The report, however, is not to be limited to those manufacturers. If you have sold roll your own tobacco from other non-participating manufacturers into Delaware, please identify those manufacturers or importers on this form. If you need additional space, please attach a separate sheet. If you sold no such items into Delaware, please check below:

**NO. NON-PARTICIPATING MANUFACTURER
PRODUCTS SOLD INTO DELAWARE:**

A Name of Manufacturer	B Cigarette equivalent units (0.09 oz.)	C Ounces not reported in Column B
1. Star Scientific, Inc.		
2. National Tobacco/North Atlantic Operating (Zig Zag)		
3. S & M Brands (Bailey's)		
4. Smokin' Joe/Alternative (Smokin' Joe's, Lewiston, Glory, Exact, Market, Pure)		

**Schedule NPM-1999 (Proposed).
Sales of Cigarettes from Non-participating
Manufacturers or Importers**
(Attach to Delaware Division of Revenue
Forms 1074 and 1075)
Monthly Report of Cigarettes and Cigarette Tax Stamps

Taxpayer's Name	Taxpayer's Federal EIN or SSN	Report for Month of _____, 200__
-----------------	-------------------------------	----------------------------------

Include sales for the applicable manufacturers listed below. The report, however, is not to be limited to those manufacturers. If you have sold into Delaware cigarettes from other non-participating manufacturers, please identify those manufacturers or importers on this form. If you need additional space, please attach a separate sheet. If you sold no such items into Delaware, please check below:

**NO. NON-PARTICIPATING MANUFACTURER
PRODUCTS SOLD INTO DELAWARE:**

PROPOSED REGULATIONS

A Name of Manufacturer	B Cigarettes Quantity Packs of 20	C Cigarettes Quantity Packs of 25	D Roll Your Own Cigarette Equivalent Units (.09 oz.)	E Roll Your Own (Ounces not reported in Column D)
1. Star Scientific, Inc.				
2. National Tobacco/North Atlantic Operating (Zig Zag)				
3. S & M Brands (Bailey's)				
4. Smokin' Joe / Alternative (Smokin' Joe's, Lewiston, Glory, Exact, Market, Pure)				
5. Gudang Garam TBK (Import)				
6. P T Bentoel Prima (Import)				
7. M/S Mangalore Ganesh Beedi Works (Import)				
8. Gunwantrai Harivallabh (Import)				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
Total all packs of 20 cigarettes (Column B), 25 cigarettes (column C), roll your own cigarette equivalent units (column D), and roll your own ounces (Column E).				

Exhibit A

Participating Manufacturers as of April 27, 2000

Alliance Tobacco Corp.
 Brown & Williamson
 Commonwealth Brands, Inc.
 Dhanraj International, Inc.
 House of Prince A/S
 Imperial Tobacco Limited/ITL (USA) Limited
 Japan Tobacco International U. S. A., Inc.
 King Maker Marketing
 Landmark
 Lane Limited
 Liggett Group Inc.
 Lignum-2, Inc.
 Lorillard Tobacco Company

LTD Corporation
 Mac Baren Tobacco Company A/S
 P. T. Djarum
 Peter Stokkebye International A/S
 Philip Morris Incorporated
 Planta Tabak-manufaktur GmbH & Co.
 Premier Marketing Incorporated
 R. J. Reynolds Tobacco Company
 Santa Fe Natural Tobacco Company, Inc.
 Sherman 1400 Broadway N.Y. C., Inc.
 Societe Nationale d'Exploitation Industrielle
 des Tabacs et Allumettes (Seita)
 The Medallion Company, Inc.
 Tobacco Exporters International (USA) Ltd (TEI)
 Top Tobacco, L.P.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. 6010)

1. TITLE OF THE REGULATIONS:

Regulation No. 30, Title V State Operating Permits Program.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to revise Regulation No. 30 to correct deficiencies identified by the EPA in a December 4, 1995 Federal Register notice (60 FR 62032).

3. POSSIBLE TERMS OF THE AGENCY ACTION:
None.**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del. C., Chapter 60.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on these proposed revisions to Regulation No. 30 on June 26, 2000 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, DE. Comments on this proposal may either be made at the hearing, or submitted to the Department in writing not later than the close of business, June 30, 2000.

7. PREPARED BY:

Ronald A. Amirikian/(302)323-4542

**Revisions to Regulation No. 30,
Title V State Operating Permit Program**

The Department is proposing to make the following four revisions to Regulation No. 30:

1. Amend Section 6(f)(1) as follows:

(1) Except as provided in this regulation, a source may request that the *Department* include in the *Part 70 permit* a provision stating that compliance with the terms and

conditions of the permit shall constitute compliance with 7 ~~Del. C. Chapter 60, for the discharge of any air contaminant~~ any applicable requirement specifically identified in the permit ~~application~~ as of the day of permit issuance.

2. Amend Section 7(d)(1)(v) as follows:

(v) Incorporates into the permit the requirements from preconstruction review permits issued by the *Department* under ~~Parts C and D of Title I of the Act, or permits issued under~~ Regulation No. 2 and/or Regulation No. 25, when such permits were issued meeting the requirements of Sections 11.2(j), 11.5, 12.4, 12.5, and 12.6 of Regulation No. 2 ~~public participation provisions of section 7(j).~~

3. Amend Section 7(f)(4) as follows:

(4) Any reopening under paragraph ~~(1)(ii) (1)(iii)~~ of this subsection shall be completed within eighteen (18) months after promulgation of the applicable requirements.

4. Amend Section 7(j)(4) as follows:

(4) Any public hearing held under this section shall be held no earlier than the 31ST day following publication of ~~a~~ the public notice that a public hearing will be held, and of the time and place that hearing will be held.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY**

Statutory Authority: 24 Delaware Code,
Section 105(1) (24 Del.C. §105(1))

Order Adopting Rules and Regulations

AND NOW, this 26th day of April, 2000, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Accountancy of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

Nature of the Proceedings

Pursuant to its authority under 24 Del. C. §105(1) the Board proposed to adopt new Rules and Regulations to replace its existing Rules and Regulations. Substantive changes to the rules and regulations included changes in definitions of full and part time employment as it relates to the statutory experience requirement; deletion of provisions pertaining to matters governed by other acts and statutes (e.g. disciplinary hearings); establishing application requirements; requiring demonstration of good character and education requirements prior to approval to sit for examination; clarification of statutory requirements and required documentation for permits to practice certified

public accountancy and for certificate reciprocity; establishing reporting requirements and clarification of substantive requirements for continuing education credits; and procedural rules pertaining to hearings before the Board. In addition, material which unnecessarily duplicated the statutes or other rules and regulations was stricken. All of the rules and regulations were entirely re-ordered and re-numbered.

Notice of the public hearing on the Board's proposed rule adoption was published in the *Delaware Register of Regulations* on January 1, 2000 and in two Delaware newspapers of general circulation, all in accordance with 29 Del. C. §10115. The public hearing was held as noticed on February 23, 2000. Following public comment at the February 23, 2000 hearing, the Board deliberated upon the proposed regulations and voted to adopt them in their entirety, with the exception of Rules 6.3.2 and 6.4.2, regarding the experience affidavit, to which amendments were proposed.

Notice of a second public hearing on the proposed amendments to Rules 6.3.2 and 6.4.2 was published in the *Delaware Register of Regulations* on March 1, 2000 and in two Delaware newspapers of general circulation, in accordance with 29 Del. C. §10115. The second public hearing was held as noticed on April 26, 2000. No additional public comment, oral or written, was received at the April 26, 2000 hearing. This is the Board's Decision and Order ADOPTING the rule amendments as proposed, subject to the revisions to Rules 6.3.2 and 6.4.2 published in the March 1, 2000 *Register*.

Evidence and Information Submitted at Public Hearing

The Board received two written comments at the February 23, 2000 public hearing in response to the notice of intention to adopt the proposed rule amendments.

Carol Ellis, Director of the Division of Professional Regulation, submitted a written comment suggesting changes to Rule 6.4.1 to broaden the range of experience allowed for permit applicants who have worked in industry and commerce, suggesting that the Board use certain language found in the Uniform Accountancy Act (UAA).

Ezra Smith, P.A., a member of the Board of Accountancy, submitted a written comment opposing Rules 6.5.1 and 6.5.2 on the basis that they impose additional experience requirements on persons previously practicing as licensed public accountants, beyond the language of 24 Del.C. §§108(c)(2)(a)(b) and (c) as it pertains to the practice of public accountancy.

The Board received oral comments from the public at the February 23, 2000 public hearing as follows:

Tom Grabowski, CPA, stated his disagreement with Ms. Ellis' written comments regarding broadening the types of experience allowed for those in industry and commerce. He stated that the banking industry was seeking very broad based requirements. He pointed out that the problem with allowing broad based experience requirements is that the public thinks all CPA's have the same experience and qualifications. There is an expectation that CPA can do certain things, such as preparing financial statements, so the experience requirement in that area is necessary. Mr. Grabowski stated that he approved of the language of 6.4.1 as it is written in the proposed regulations.

David Doane, CPA, explained that the UAA is a unified document. While it provides for broader experience, it also offsets this by requiring more/different types of education, peer review and other checks on qualifications. In response to Ms. Ellis' suggestion, Mr. Doane expressed concern that, under broad based experience requirements, a candidate could, for example, work only for a bank and get banking but not financial statement experience, get a CPA permit, then leave the bank and go out into the public with a permit to practice that says he or she is able to do financial statements and audits—areas in which the CPA has no experience. Mr. Doane believes that experience which is substantially equivalent to CPA firm experience can be obtained in banking and industry. Mr. Doane stated that he approved of the language of 6.4.1 as it is written in the proposed regulations, and believes it provides public protection.

Mr. Doane also suggested that Rules 6.3.2 and 6.4.2 should be mirror images. The Board should require the same type of experience affidavit for applicants from both CPA firms and government and industry.

Dana Rubenstein, Executive Director, Delaware Society of CPA's, stated that the yardstick for the experience

requirements of §108(c)(2) is the type of experience that would be gained in a CPA firm, and that "substantially equivalent" experience can be gained from other employment. Ms. Rubenstein believes that the experience language suggested in Ms. Ellis' draft is broader than what the law allows and is not "substantially equivalent" to CPA experience.

Ezra Smith, P.A., a member of the Board of Accountancy, also made oral comments on the same subject as his written comments, discussed above. Mr. Smith believes that 24 Del.C. §108(c)(2) only provides that a public accountant must have twice the years of experience as other permit applicants, not specific types of experience. He would recommend striking Rule 6.5.1

Findings of Fact and Conclusions

As outlined in the preceding section, the public was given the required notice of the Board's intention to comprehensively revise its regulations and was offered an adequate opportunity to provide the Board with comments on the proposed changes. The Board has carefully considered the comments received from the public in reaching the following findings of fact and conclusions. February 23, 2000 hearing:

The Board concludes that its consideration of the proposed revisions to its Rules and Regulations is within the Board's general authority to promulgate regulations under 24 Del.C. §105. Having received no public comment on Rules 1.0 through 5.0 and 7.0 through 13.0, and finding that these are necessary for the enforcement of 24 Del.C. chapter 1, and for the full and effective performance of the Board's duties under that chapter, the Board unanimously voted to adopt these rules.

The Board deliberated at length on issues raised by the public pertaining to the Rule 6.0 experience requirements. The Board concluded that it could not accept the language for Rule 6.4.1 proposed by Ms. Ellis, finding that the UAA cannot be adopted piecemeal, and that the proposed language is too broad to ensure that all applicants have sufficient experience to do CPA work. The Board agreed with the majority of the public comments that supported 6.4.1 as written.

The Board discussed the public comments regarding the inconsistency in 6.3.2 and 6.4.2 as to what proof of experience is required for applicants. The Board believes this is a valid comment and that the sections should mirror each other. The Board suggested changing the language of 6.3.2 by striking the provision requiring a statement of the amount of time devoted to each practice area. The Board suggests holding government and industry applicants to same standard as CPA firm applicants. Therefore, the Board proposed deleting 6.4.2 as originally written and substituting the same (amended) language of 6.3.2 as the new 6.4.2. The

Board deemed this to be a substantive change and voted to republish the changes and hold a second public hearing on amended rules 6.3.2 and 6.4.2 pursuant to the Administrative Procedures Act.

Following the February 23, 2000 hearing, the Board additionally considered Mr. Smith's written and oral comments regarding the experience required of public accountants applying for CPA permits. Mr. Smith stated his belief that the legislature intended the doubling of time of experience required for public accountants (in §108(c)(2)) as a substitute for the type (CPA firm and/or financial statement) experience required of other applicants. A majority of the board disagreed with this reasoning. A majority of the Board finds that all CPA's with permits to practice have the exclusive right to issue financial statements and that the experience requirement the Board has proposed ensures that they are competent to do so. Professional standards and rights to practice must be the same for all CPA's. The Board finds that it would do the public a disservice to have different CPA's held to different standards of experience in obtaining licensure.

As to Rule 6.0, Mr. Smith made a motion to strike proposed Rule 6.5.1 as written and adopt language similar to that proposed by Ms. Ellis. The motion failed for lack of a second.

The Board then entertained a motion to adopt proposed Rule 6.0 as written, with the exception of Rules 6.3.2 and 6.4.2, to which amendments, as outlined above, were proposed. The Board voted 7-1 in favor of this motion, with Mr. Smith dissenting.

April 26, 2000 hearing:

Following due notice to the public, and publication in the March 1, 2000 *Delaware Register of Regulations*, a second public hearing was held as noticed on proposed amendments to Rules 6.3.2 and 6.4.2. No additional public comment, oral or written, was received at the April 26, 2000 hearing. The Board deliberated on the proposed amendments to Rules 6.3.2 and 6.4.2, again considering public comment received on these rules in February. The Board finds that the proposed amended Rules 6.3.2 and 6.4.2 are necessary for the enforcement of 24 *Del.C.* chapter 1, and for the full and effective performance of the Board's duties under that chapter. The Board unanimously voted to adopt Rules 6.3.2 and 6.4.2 as published in the March 1, 2000 *Register*.

Order

NOW, THEREFORE, by affirmative vote of a majority of the Board of Accountancy, **IT IS HEREBY ORDERED THAT:**

1. The proposed Rules and Regulations are *approved and adopted* in their entirety, in the exact text attached hereto as Exhibit "A". These Rules and Regulations will constitute the complete Rules and Regulations of the Board and will supersede all previous versions.

2. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 *Del.C.* §10118(e).

3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

By Order of the Board of Accountancy
(as authenticated by a quorum of the Board):

Sally S. Stokes, President, CPA Member
B. Christopher Daney, CPA Member
Brian Dolan, Esquire, Public Member
M.C. Landis, Esquire, Attorney Member
John A. McManus, PA Member
Rita M. Paige, Public Member
Paul C. Seitz, CPA Member
Ezra P. Smith, PA Member
William F. Winters, CPA Member, Attorney member
John A. McMANus, PA Member

1.0 GENERAL PROVISIONS

1.1 Pursuant to 24 *Del.C.* Chapter 1, the Delaware Board of Accountancy ("the Board") is authorized to, and has adopted, these Rules and Regulations. The Rules and Regulations are applicable to all certified public accountants, public accountants, permit holders and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board's Administrative Assistant at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) 739-4522. Requests to the Board may be directed to the same office.

1.3 The Board's President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President's absence, the Board's Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 *Del.C.* Chapter 1.

1.7 Board members are subject to the provisions applying to "employees" in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 *Del.C.* Chapter

58. No member of the Board shall: (1) serve as a peer reviewer in a peer review of a licensee; or (2) be an instructor in an examination preparation course or school or have a financial interest in such an endeavor.

2.0 PROFESSIONAL CONDUCT

2.1 A certified public accountant, or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants shall automatically be made a part of these Rules and Regulations unless specifically rejected by the Board.

3.0 USE OF DESIGNATIONS

3.1 Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Certified or Public Accountancy:

3.1.1 Only the following individuals and entities may use the designation "certified public accountant", the abbreviation "CPA", and other designations which suggest that the user is a certified public accountant, in the practice of certified or public accountancy:

3.1.1.1 An individual who is registered with the Board and holds a certificate of certified public accountant and a current permit to practice.

3.1.1.2 A partnership, professional association or professional corporation composed of certified public accountants which is registered with the Board and holds a current firm permit to practice.

3.2 Designation "Certified Public Accountant" and the abbreviation "CPA" by certificate holders who do not maintain a permit to practice:

3.2.1 An individual who holds a certificate of certified public accountant but does not maintain a permit to practice may use the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery if:

3.2.1.1 The certificate of certified public accountant has not been suspended or revoked and is in good standing.

3.2.1.2 The individual does not engage in the practice of certified or public accountancy and does not offer to perform certified or public accountancy services.

3.2.1.3 The individual does not hold himself or herself out to be in the practice of certified or public accountancy when performing or offering to perform accounting, bookkeeping, tax or accounting-related matters.

3.2.1.4 The individual does not engage in solicitations or advertising, including listings and advertisements in phone directories, newspapers, or other media (including electronic), in which the individual uses

the designation "certified public accountant" or the abbreviation "CPA".

3.2.1.5 The individual does not publicly display a certificate of certified public accountant to imply that he or she is licensed in the practice of certified or public accountancy or offering to perform certified or public accountancy services.

3.2.1.6 The individual is employed by a government, or an academic institution, corporation, or company not engaged in the practice of certified or public accountancy and uses the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery provided:

3.2.1.6.1 The business cards and stationery indicate the name of the employer and the title of the person; and

3.2.1.6.2 The business cards or stationery are not used to solicit certified or public accountancy services or accounting-related business.

3.2.2 An individual who holds a certificate of certified public accountant but not a permit to practice may not refer to his or her business as "John/Jane Doe, CPA" or have business cards imprinted "John/Jane Doe, CPA, and Company or Institution, Title" with the intent to offer certified or public accountancy services.

3.2.3 An individual who holds a certificate of certified public accountant, but not a permit to practice, may not perform a service related to accounting, including bookkeeping and tax returns, while holding him or herself out as a certified public accountant without a permit to practice. Similarly, an individual may not prepare income tax returns and refer to his or her business or sign tax returns as "John/Jane Doe, CPA" without a permit to practice. Such individual may put up a sign reading "John/Jane Doe, Tax Preparer" and prepare and sign tax returns as "John/Jane Doe".

3.3 Designation "Public Accountant" and the abbreviation "PA"

3.3.1 Only the following individuals and entities may use the designation "public accountant," the abbreviation "PA", and other designations which suggest that the user is a public accountant, in the practice of public accountancy.

3.3.1.1. An individual who is registered with the Board and holds a permit to practice public accountancy in good standing.

3.3.1.2. A partnership, professional association or professional corporation composed of public accountants which is registered with the Board and holds a current firm permit in good standing to practice public accountancy.

3.3.2 An individual may not refer to his or her business or sign tax returns as "John/Jane Doe, PA" without a permit to practice public accountancy.

3.4 No person, partnership, or corporation shall hold

him/her/itself or otherwise use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "licensed public accountant", "registered public accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any other abbreviations of any prohibited titles or designations likely to be confused with "CPA" or "PA". It is not a violation of this clause for an individual conferred by the Internal Revenue Service as an enrolled agent to use that title or the abbreviation "EA".

3.5 No person, partnership, or corporation shall use a title or specialized designation that includes the word "accredited" or "certified" or an abbreviation of such a title or designation or otherwise claim a qualification unless that designation has been conferred by a bona fide organization after evaluation of the individual's credentials and competencies. This includes such designations as "CFP", "CVA", "ABV", etc.

4.0 APPLICATIONS

4.1 An application for examination, certificates, permits to practice and renewals of permits to practice shall be submitted on forms approved by the Board.

4.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete or in proper form until the Board has received all required and requested documents, materials, information and fees.

5.0 EXAMINATION AND CERTIFICATE REQUIREMENTS

5.1 Each applicant for a certificate must provide the Board with the following:

5.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 *Del.C.* §107(a)(1).

5.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination.

5.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

5.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

5.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and

Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations. An applicant who expects to meet the education requirements of Section 5.1.4 within 120 days following the examination is eligible to take the examination provided he or she:

5.2.1 meets the character requirements of Section 5.1.1; and

5.2.2 provides evidence satisfactory to the Board that he or she is expected to complete the education requirements within 120 days of the examination.

6.0 REQUIREMENTS FOR PERMIT TO PRACTICE CERTIFIED PUBLIC ACCOUNTANCY

6.1 For purposes of Section 6.0 of these Rules and Regulations, the term "certificate holder" shall be defined as the holder of a certificate of certified public accountant issued by any jurisdiction.

6.2 Each applicant for a permit to practice certified public accountancy must provide the Board with the following:

6.2.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged

in any acts that would be grounds for discipline by the Board;

6.2.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice;

6.2.3 Evidence in a form satisfactory to the Board that the applicant holds a valid certificate; and

6.2.4 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 *Del.C.* §108(c)(2) and Sections 6.3, 6.4 and 6.5 of these Rules and Regulations, as applicable.

6.3 Applicants who seek a permit based on their experience as an employee of a firm engaged in the practice of certified public accountancy shall meet the following standards and requirements:

6.3.1 The distinguishing characteristic of practice as a certified public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagements, resulting in the issuance of financial statements including appropriate footnote disclosure and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants. Such experience must be obtained under the supervision of a certified public accountant who holds a valid permit to practice certified public accountancy.

6.3.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area (~~audits, reviews, taxes~~) and ~~stating the approximate time devoted to each~~, and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.3.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than

thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

6.4 Applicants who seek a permit based on their experience in government or industry shall meet the following standards and requirements:

6.4.1 The applicant shall submit a detailed description of the education and experience requirements of entry to his or her job, a detailed description of his or her duties and responsibilities over the entire period of time relied on to meet the experience qualification, a detailed description of the reporting requirements of his or her job, and a statement of the training opportunities in which the applicant has participated. The employment submitted as qualifying experience must include extensive experience resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants. Such experience must be obtained under the direct supervision of a certified public accountant who holds a valid permit to practice certified public accounting.

6.4.2 ~~Each applicant must submit an affidavit from each supervising CPA with whom qualifying experience is claimed, setting forth the dates of employment and verifying the applicant's statement of his or her duties and responsibilities.~~ Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.4.3 Each application under this subsection will be considered on its own merits and the Board will evaluate the applicant's experience, as set forth in the application materials, for the purpose of determining whether it is substantially equivalent to experience as an employee of a firm engaged in the practice of certified public accountancy. Such experience may be prorated at less than 100% equivalence.

6.5 Applicants who seek a permit based on their experience in the practice of public accountancy shall meet the following standards and requirements:

6.5.1 The distinguishing characteristic of practice as a public accountant is the requirement that the practitioner

compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.5.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience.

6.5.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

7.0 REQUIREMENTS FOR PERMIT TO PRACTICE PUBLIC ACCOUNTANCY

7.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

7.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 *Del.C.* §107(a)(1).

7.1.2 Evidence in a form satisfactory to the Board that the applicant holds, as a minimum, an associate degree with a concentration in accounting. The provisions of Sections 5.1.4.1 and 5.1.4.2 of these Rules and Regulations also apply to applicants for permits to practice public accountancy.

7.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully passed the accounting examination given by the Accreditation Council for Accountancy & Taxation, which is the examination recognized by the National Society of Public Accountants, or both the Accounting and Reporting and the Auditing portions of the Uniform Certified Public Accounting Examination.

7.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

7.1.5 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board.

7.1.6 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a permit to practice.

8.0 RECIPROCITY

8.1 An applicant seeking a permit to practice through reciprocity shall demonstrate that he or she meets requirements of 24 *Del.C.* §109(a) and must provide the Board with the following:

8.1.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board; and

8.1.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice.

8.2 The provisions of Section 6.3 of these Rules and Regulations shall also apply to the experience required by 24 *Del.C.* §109 (a) (3) for the granting of a permit by reciprocity.

8.3 An applicant seeking a certificate through reciprocity shall demonstrate that he or she meets the requirements of 24 *Del.C.* §114 and must provide the Board with the following:

8.3.1 A certified statement from the licensing authority, or comparable agency, of the jurisdiction through which the applicant seeks reciprocity that the applicant holds a valid certificate with no past or pending disciplinary proceedings or complaints against him or her; and

8.3.2 Copies of the law and rules or regulations establishing the requirements for certification in the jurisdiction through which the applicant seeks reciprocity.

9.0 FIRM PERMITS TO PRACTICE

9.1 For purposes of 24 *Del.C.* §111 and this Section of the Rules and Regulations, the term "principal of a firm" is defined as any individual who has an equity interest in the firm.

9.2 Certified public accounting and public accounting firms practicing as corporations must be organized as professional corporations ("P.C.") or professional associations ("P.A.") in compliance with The Professional

Service Corporation Act, 8 *Del. C. Sec. 671, et. seq.*

9.3 Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such a time as that person begins to perform certified public accounting or public accounting services.

9.4 Certified public accounting and public accounting firms may not practice using firms names that are misleading as to organization, scope, or quality of services provided.

10.0 CONTINUING EDUCATION

10.1 Hours Required: Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period of each year ending with an odd number. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period.

10.2 Reporting Requirements: The Board will mail permit renewal forms which provide for continuing professional education reporting to all permit holders. Each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board at least 60 days prior to the permit renewal date set by the Division of Professional Regulation.

10.3 Proration: Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

10.3.1 If the initial permit was issued less than one year prior to the renewal date, there shall be no continuing education requirement for that period.

10.3.2 If the initial permit was issued at least one year, but less than two years prior to the renewal date, the continuing education requirement shall be 40 hours for that period.

10.4 Exceptions: The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

10.5 Qualified Programs.

10.5.1 General Determination: The overriding consideration in determining if a specific program qualifies as a continuing professional education program is whether it is a formal program of learning which contributes directly to the professional competence of the permit holder.

10.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

10.5.2.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.

10.5.2.2 The program is at least an hour (a

fifty-minute period) in length.

10.5.2.3 The program is conducted by a qualified instructor or discussion leader.

10.5.2.4 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

10.5.3 Programs deemed approved: Provided the criteria in Sections 10.5.1 and 10.5.2 of these Rules and Regulations are met, the following are deemed to qualify for continuing professional education:

10.5.3.1 Programs approved by National Association of State Boards of Accountancy (NASBA);

10.5.3.2 Professional development programs of national, state and local accounting organizations.

10.5.3.3 Technical sessions at meeting of national, state and local accounting organizations and their chapters.

10.5.3.4 University or college courses:

10.5.3.4.1 Credit courses: each semester hour credit shall equal 5 hours of continuing professional education.

10.5.3.4.2 Non-credit courses: each classroom hour shall equal one hour of continuing professional education.

10.5.3.5 Programs of other organizations (accounting, industrial, professional, etc.)

10.5.3.6 Other organized educational programs on technical and other practice subjects including "in-house" training programs of public accounting firms.

10.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

10.5.5 Instructors and Discussion Leaders: Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each classroom hour for research and preparation to the extent that the activity contributes to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

10.5.6 Published Articles and Books: One hour credit will be granted for each 50 minute period of

preparation time on a self-declaration basis to a maximum of 20 hours in each biennial reporting period. A copy of the published article must be submitted to the Board upon request.

10.5.7 Committee, Dinner, Luncheon and Firm Meetings. One hour credit will be granted for each 50 minutes of participation. Credit will only be granted for those meetings which are structured as a continuing education program.

10.6 Control and Reporting

10.6.1 Each applicant for permit renewal shall provide a signed statement under penalty of perjury, disclosing the following information pertaining to the educational programs submitted in satisfaction of the continuing education requirements:

10.6.1.1 school, firm or organization conducting course;

10.6.1.2 location of course;

10.6.1.3 title of course or description of content;

10.6.1.4 dates attended; and

10.6.1.5 hours claimed.

10.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies.

10.7 Evidence of Completion- Retention

10.7.1 Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

10.7.2 Sufficiency of evidence includes retention of course outlines and such signed statements of attendance as may be furnished by the sponsor.

10.7.3 For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and attendance record.

10.7.4 For non-credit courses at accredited universities or colleges, a statement of the hours of attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

10.8 Composition of Continuing Professional Education: The biennial continuing professional education requirement shall include a minimum of 20 percent in accounting and/or auditing and a minimum of 20 percent in

taxation and the remaining hours may be satisfied by general subject matters so long as they contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

Accounting

Auditing

Taxation

Management Services Mathematics, Statistics, Probability, and Quantitative Applications in Business

Finance, Production and Marketing

Personnel Relations, Business Management and Organization

Computer Science

Communication Arts

Economics

Business Law

Social Environment of Business

Specialized Areas of Industry

Administrative Practice

11.0 ADDITIONAL PROVISIONS CONCERNING EXAMINATIONS

11.1 All examinations required under 24 *Del.C.* Chapter 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by the Board's designated agent.

11.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

11.4.2 Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

11.4.3 At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he or she does not have current credit for certification or permit, whichever is applicable.

11.4.4 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

11.4.5 Applicants will be informed in writing of the results achieved in each examination.

11.5 Passing Grade on the Uniform CPA Examination

11.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

11.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

11.6 Conditional Status for Subjects passed in this State

11.6.1 An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

11.6.1.1 To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

11.6.1.2 To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

11.6.1.4 An applicant who fails to pass all subjects required during the 5 consecutive examinations following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

11.7.1 An applicant who has passed one or more subjects of either examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts so passed under the following conditions, and provided the requirements of Section 11.6 of these Rules and Regulations have been met:

11.7.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

11.7.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she

meets all the requirements of the Delaware statute and regulations; and

11.7.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

11.7.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

11.7.3 If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

12.0. EXCEPTED PRACTICES; WORKING PAPERS

12.1. Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 *Del.C.* §115. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of 24 *Del.C.* Chapter 1.

12.2 Working Papers: For purposes of 24 *Del.C.* §120, the term "working papers" does not properly include client records. In some instances, a permit holder's working papers may include data which should be part of the client's books and records, rendering the client's books and records incomplete. In such instances, that portion of the working papers containing such data constitutes part of the client's records and should be made available to the client upon request.

13.0 HEARINGS

13.1 Disciplinary proceedings against any certificate or permit holder may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 *Del.*

C. §8807(h)(1)-(3).

13.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

13.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

13.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

13.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 *Del. C. Sec.* 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

13.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. A partnership or corporation may be represented at such hearing by a duly authorized representative of such partnership or corporation who shall be a partner or shareholder thereof and a permit holder of the State in good standing, or by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

13.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the accused shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

13.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 *Del.C.* §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

13.2. General procedure

13.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

13.2.2 Strict rules of evidence shall not apply. All

evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

13.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practical.

13.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing at least three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

14.0 VOLUNTARY TREATMENT OPTION FOR CHEMICALLY DEPENDENT OR IMPAIRED PROFESSIONALS

14.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

14.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

14.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

14.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the

approval of the Director of Professional Regulation and the chairperson of the participating Board.

14.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

14.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

14.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

14.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

14.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

14.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

14.6.5 Agreement by the regulated professional

that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

14.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

14.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

14.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

14.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

14.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

14.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

14.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DIVISION OF PROFESSIONAL REGULATION

BOARD OF CLINICAL SOCIAL WORK

EXAMINERS

Statutory Authority: 24 Delaware Code,
Section 3906(1) and (7) (24 **Del.C.** §3906(1)(7))

Order Adopting Rules and Regulations

AND NOW, this 15th day of May, 2000, in accordance with 29 **Del.C.** §10118 and for the reasons stated hereinafter, the Board of Clinical Social Work Examiners of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

Nature of the Proceedings

Pursuant to its authority under 24 **Del.C.** §§3906(1) and (7), the Board proposes to adopt changes and additions to its existing Rules and Regulations, relating to continuing education requirements for licensees and ethics. Notice of the public hearing on the Board's proposed rule amendments was published in the Delaware *Register of Regulations* on March 1, 2000 and in two Delaware newspapers of general circulation, all in accordance with 29 **Del.C.** §10115. The public hearing was held as noticed on April 17, 2000. The Board deliberated and voted on the proposed rule amendments following the public hearing at the April 17, 2000 meeting, voting unanimously to adopt the rule amendments. This is the Board's Decision and Order ADOPTING the rule amendments as proposed.

Evidence and Information Submitted at Public Hearing

The Board received no written comments in response to the notice of intention to adopt the proposed rule amendments. The Board received oral comments from the public at the April 17, 2000 public hearing as follows:

Dr. Maria M. Carroll of the Delaware State University Department of Social Work, stated that she was pleased with the proposed revisions and found them to be thorough and workable. However, Dr. Carroll expressed concern with the provision in Rule 7.4.1 that the signed informed consent document required when a client is treated by a supervised intern or student contain the name and telephone number of the supervising licensed clinical social worker (LCSW). Dr. Carroll stated that interns and student in other professions are not required to have their clients sign such a document and that this might imply that social work students are less competent than others. Hospitals also already have a basic informed consent document that patients sign which states that treatment may be given by interns (in various professions). Dr. Carroll expressed concern about requiring additional documentation for social work interns.

Marlene Saunders, of the Delaware State University Department of Social Work, stated that her thoughts and concerns about the proposed regulations echoed Dr. Carroll's.

Findings of Fact and Conclusions

As outlined in the preceding section, the public was given the required notice of the Board's intention to amend its rules and regulations and was offered an adequate opportunity to provide the Board with comments on the proposed regulations. The Board concludes that its consideration of the proposed rules and regulations is within the Board's general authority to promulgate regulations under 24 **Del.C.** §3906(1). Specific statutory authority for the Board's revision of continuing education standards (Proposed Rule 5.0) is found at 24 **Del.C.** §3906(7).

Proposed Rule 5.0 completely revises the current Rule 5.0 pertaining to Continuing Education. Proposed Rule 5.0 clarifies the requirements and procedures for hardship extension requests; allows for credit for certain, pre-approved, self-directed activities, such as teaching and research, and clarifies content requirements, including specifications of what courses qualify under Categories I and II.

The Board finds that the new rules regarding continuing education will provide for a more thorough continuing education program and the clarification of the content and category requirements will provide better guidance to licensees. The Board concludes that the revision of Rule 5.0 helps the Board implement 24 **Del.C.** §3906(7) in a way consistent with the interests of the public, the regulated practitioners, and the Board's need to process license renewals in an orderly and efficient manner.

The Board further finds that the modification to Rule 6.3 is necessary to make its definition of "hardship" consistent with that set forth in Rule 5.1.3.

The Board finds that new Rule 7.0 pertaining to Ethics will provide licensees with rules and guidelines for the conduct of safe, ethical practice in areas such as client services, business practices, confidentiality and clinical supervision. The Board concludes that it has the implicit authority to adopt the proposed rule regarding ethics. The Board's authority to adopt rules and regulations is granted by the General Assembly. As a result, the Board's actions must be consistent with the power awarded to it by the legislature and must have a rational relationship to the goals and policies expressed in the Board's enabling statutes. See *Wilmington Country Club v. Delaware Liquor Comm.*, Del. Supr., 91 A.2d 250 (1952). The authority given to the Board through the legislative process should be interpreted to allow "the fullest accomplishment of the legislative intent or policy." *Atlantis I Condominium Assoc. v. Bryson*, Del. Supr., 403 A.2d 711, 713 (1979).

The primary objective of the Board of Clinical Social Work Examiners, as enunciated by the General Assembly, is to protect the general public, particularly the recipients of Social Work services, from unsafe practices. 24 Del. C. §3901. The secondary objectives of the Board are to maintain minimum standards of practitioner competence and to maintain standards in the delivery of services to the public. Id. In carrying out its objectives, the Board has been granted permission by the legislature to “develop standards” assuring professional competency. Id. The Board also has authority to monitor complaints against practitioners; to sanction practitioners when necessary and to promulgate rules and regulations. Id.; *see also*, 24 Del. C. §§3906(1)(6)(8)(9); §3915 (Board has authority to discipline licensees for specific violations or conduct); §3913 (statute prohibits social worker from violating confidentiality). The Board finds that the establishment of rules and regulations regarding ethics will implement these statutory objectives by protecting the public from unsafe and unethical practices and establishing specific minimum standards of professional competence (ethical behavior) in the delivery of services to the public.

The Board specifically considered the public comment that was received with regard to proposed Rule 7.4.1. The Board finds that the informed consent documents used by hospitals could qualify as the “statement of informed consent” under Rule 7.4.1. The Board noted that requiring the name and telephone number of the supervising LCSW on the consent form might pose a problem for hospitals and institutions if their existing forms do not provide for such information. While the Board does not wish to put an undue burden on institutions, the Board determined that the name and telephone number requirement is critical and should remain in the Rule. It is important for patients and families to have access to this information to know whom they should contact if a problem arises. The Board further notes that the informed consent requirement applies only to activities which constitute the practice of clinical social work, and not to administrative or adjunctive services.

In summary, the Board concludes that the proposed revisions to its Rules and Regulations are necessary for the enforcement of 24 Del. C. Chapter 39, and for the full and effective performance of the Board’s duties under that Chapter. The Board also finds that adopting the regulations as proposed is in the best interest of the citizens of the State of Delaware, particularly those persons who are the direct recipients of services provided by the Board’s licensees. The Board, therefore, adopts the proposed revisions to its Rules and Regulations as set forth in Exhibit “A” attached hereto.

Order

NOW, THEREFORE, by unanimous vote of a quorum

of the Board of Clinical Social Work Examiners, **IT IS HEREBY ORDERED THAT:**

1. The revisions to Rules and Regulations 5.0, 6.3, and 7.0 are *approved and adopted* in the exact text attached hereto as Exhibit “A”.
2. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 Del. C. §10118(e).
3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

Board of Clinical Social Work Examiners
(as authenticated by a quorum of the Board):

Elizabeth Stiff, LCSW, President, Professional Member
Janet Tovo, LCSW, Secretary, Professional Member
Charles E. Marvil, LCSW, Professional Member
Claude Massey, Public Member
Grace A. Pesiskey, LCSW, Professional Member
Frances E. Pruitt, Public Member
Thomas C. Tulley, Public Member

Board of Clinical Social Work Examiners

1.0 Election of Officers and Responsibilities

1.1 Officers shall be elected in September of each year, for a one year term. Special election to fill vacancies shall be held upon notice and shall be only for the balance of the original term.

1.2 Officers have the following responsibilities:

1.2.1 The President will preside at all meetings and sign official documents on behalf of the Board.

1.2.2 The Vice-President will perform the duties of the President when the latter is unavailable or unable to perform the duties of the President.

1.2.3 The Secretary will preside over meetings in the absence of the President and Vice-President.

2.0 Professional Supervision

2.1 Acceptable supervision shall be that amount of personal oversight by the licensed professional that would be considered usual and customary in the profession consistent with the applicant’s level of skill, education and experience, but in any event should include the following activities, by way of example and not by way of limitation:

2.1.1 Individual case reviews.

2.1.2 Evaluations of diagnosis and courses of treatment.

2.1.3 Proper adherence to agency policy and procedures.

2.2 The amount of supervisory contact shall be at least one hour per week during the supervised period. This contact must be on a one-to-one face-to-face basis.

2.3 The Board shall require submission of the following information from the supervisor(s): supervisor's name, business address, license number, professional field and State in which the license was granted during the period of supervision; agency in which the supervision took place (if applicable); the number of qualifying practice hours toward the statutory requirement; and the number of one-to-one face-to-face supervisory hours.

2.4 A licensed Psychiatrist shall be defined as a licensed Medical Doctor with a specialty in psychiatry or a licensed Doctor of Osteopathic Medicine with a specialty in psychiatry.

3.0 Application and Examination

3.1 Applications will be kept active and on file for two (2) years. If the applicant fails to meet the licensure requirements and/or pass the examination within two (2) years, the application shall be deemed to have expired and the applicant must reapply in the same manner as for initial application, i.e., by submitting the application documentation along with the proper fee to be eligible to sit for the examination.

3.2 The Board will not review incomplete applications.

3.3 All signatures must be original on all forms.

3.4 The applicant shall have obtained the passing score on the national clinical examination approved by the American Association of State Social Work Boards (AASSWB). The Board shall accept the passing grade as determined by the AASSWB.

3.5 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from International Consultants of Delaware, Inc., its successor, or any other similar agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board. (29 Del.C. § 3907(a)(1))

4.0 Renewal

4.1 The licensee's failure to receive notices or letters concerning renewal will not relieve the licensee of the responsibility to personally assure delivery of his/her renewal application to the Board.

4.2 In order to be eligible for license renewal during the first year after expiration, the practitioner shall be required to meet all continuing education credits for continued licensure, pay the licensure fee, and pay any late fee established by the Division of Professional Regulation.

5.0 Continuing Education

5.1 Required Continuing Education Hours:

5.1.1 All licensees must complete forty-five (45) hours of continuing education during each biennial

license period. For license periods beginning January 1, 1999 and thereafter, documentation of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

5.1.2 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

License Granted During First Year:	Credit	Hours Required:
January 1 – June 30	35	hours
July 1 – December 31	25	hours

License Granted During Second Year:

Credit	Hours Required:
January 1 – June 30	15 hours
July 1 – December 31	5 hours

5.1.3 Any licensee seeking to submit continuing education hours for the Board's approval after the end of a licensing period must submit a written request to the Board before the end of the licensing period and pay the appropriate administrative fee. The Board will grant such extensions only on a showing of good cause. No extension shall be for more than 120 days after the end of the licensing period. No license shall be renewed unless the licensee has fulfilled the continuing education requirement or received a good cause extension from the Board.

5.2 Definition of Continuing Education:

5.2.1 Continuing education is defined to mean courses in colleges and universities, televised and extension courses, independent study courses, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including preparation of a first-time clinical course. This definition also includes staff development activities provided by the various agencies.

5.2.2 Any program submitted for continuing education hours must have been attended during the current biennial licensing period.

5.2.3 Clock hour credit will be for the actual number of hours during which instruction was given during the program, excluding meals and breaks.

5.3 Continuing Education Requirements:

5.3.1 Category I: A minimum of thirty (30) clock hours of continuing education shall be in the assessment, diagnosis, and treatment of mental, emotional, and psychosocial disorders, shall include at least three (3) clock hours in ethical social work practice.

5.3.2 Category II: The remaining hours can be taken in social research, psychology, sociology, human growth and development, child and family development, health, social action, advocacy, human creativity, and any other offering that directly relates to the licensee's practice. A maximum of five (5) clock hours may be given for a first-

time preparation of a clinical social work course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

5.4 Course Documentation:

To receive continuing education credits, each licensee must provide documentation which identifies the date and place of the course, the number of instructional hours attended, the agenda, outline or brochure of presentation, and certificate of attendance stating hours of attendance. The Board will accept and retain the original or photocopy of such documents.

5.0 Continuing Education

5.1 Required Continuing Education Hours:

5.1.1 Hours Required. All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, 1999 and thereafter, documentation, as required by Rule 5.4, of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

5.1.2 Proration. At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

<u>License Granted During First Year Of Licensing Period</u>	<u>Credit Hours Required</u>
January 1 - June 30	35 hours
July 1 - December 31	25 hours

<u>License Granted During Second Year Of Licensing Period</u>	<u>Credit Hours Required</u>
January 1 - June 30	15 hours
July 1 - December 31	5 hours

5.1.3 Hardship. A candidate for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

5.2 Definition and Scope of Continuing Education:

5.2.1 Continuing Education is defined to mean approved courses offered by colleges and universities, televised and extension courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including self-directed activity and preparation of a first-time clinical course as described herein.

5.2.1.1 Approved Courses shall be those courses which: increase the clinical social worker (CSW)'s knowledge about, skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate-level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.

5.2.1.2 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.

5.2.1.3 Self-Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board.

5.2.2 Any program submitted for continuing education hours must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.

5.2.3 An "hour" for purposes of continuing education credit shall mean 60 minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

5.2.4. The Board may, upon request, review and approve credit for self-directed activities, to a maximum of 15 hours per biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

5.2.5 The Board may award a maximum of 5 continuing education hours for the first-time preparation and presentation of a clinical social work course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

5.3 Continuing Education Content Requirements:

During each biennial licensing period, licensees shall complete a minimum of thirty (30) hours of continuing education in Category I courses. The remaining continuing education hours may be taken in Category II courses. At least three (3) of the 30 Category I hours shall be in the area of social work ethics.

Category I: Courses which have as their primary focus and content the assessment, diagnosis, and biopsychosocial (biological, psychological and social) treatment of mental and emotional disorders, developmental disabilities, and/or substance abuse; courses which have as their primary focus and content the ethical practice of social work.

Category II: Courses in any of the following areas which are related to and increase the CSW's knowledge of mental and emotional disorders, developmental disabilities, and/or substance abuse

- a) research methods and findings;
- b) psychology and sociology;
- c) human growth and development;
- d) child and family constructs;
- e) physical illness and health;
- f) social action;
- g) advocacy;
- h) human creativity;
- i) spirituality
- k) HIV

5.4 Continuing Education Reporting and Documentation

5.4.1 In order to receive continuing education credits, a licensee must complete and submit the appropriate continuing education form provided by the Division of Professional Regulation no later than October 31st of the biennial licensing period.

5.4.2 In addition to the form, each licensee must submit the following documentation as to each course attended: a certificate of attendance or completion signed by the presenter and attesting to the number of hours the licensee attended; documentation identifying the date and location of the course, the total number of CE hours attended and the agenda, outline or brochure describing the course. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation, such as copies of program materials, to verify CE compliance. Statutory Authority: 24 Del.C. §§ 3906(7), 3912.

6.0 Inactive Status (24 Del.C. § 3911(c))

6.1 A licensee asking to have his/her license placed on inactive status must notify the Board of his/her intention to do so, in writing, prior to the expiration of his/her current license. Each subsequent request for extensions of inactive

status must be submitted to the Board in writing, before the end of the immediately prior inactive period.

6.2 A licensee on inactive status must comply with Rule 5.0, "Continuing Education," for each period of inactivity. A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation of any continuing education hours required by Rule 5.0.

6.3 On written request and a showing of hardship, the Board may grant additional time for completion of continuing education requirements to licensees returning to practice from inactive status. "Hardship" may include, but is not limited to, illness and involuntary unemployment, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities.

7.0 Ethics

7.1 Duties to Client

7.1.1 The LCSW's primary responsibility is the welfare of the client.

7.1.2 In providing services, the LCSW must not discriminate on the basis of age, sex, race, color, religion/spirituality, national origin, handicap, political affiliation, or sexual orientation.

7.1.3 When a client needs other community services or resources, the LCSW has the responsibility to assist the client in securing the appropriate services.

7.1.4 The LCSW should refer a client to other service providers in the event that the LCSW cannot provide the service requested. In the case of a referral, no commission, rebate or any other remuneration may be given or received for referral of clients for professional services, whether by an individual or an organization.

7.1.5 The LCSW must, in cases where professional services are requested by a person already receiving therapeutic assistance from another professional, clarify with the client and the other professional the scope of services and division of responsibility which each professional will provide.

7.1.6 The LCSW must maintain appropriate boundaries in his/her interactions with a client. The LCSW must not engage in sexual activity with a client. The LCSW must not treat a family member or close personal friend where detached judgment or objectivity would be impaired. Business, social or professional relationships with a client (outside of the counseling relationship) should be avoided, where such relationships may influence or impair the LCSW's professional judgment.

7.2 Confidentiality/privileged Communications

7.2.1 The LCSW must safeguard the confidentiality of information given by clients in the course of client services.

7.2.2 The LCSW must discuss with clients the

nature of and potential limits to confidentiality that may arise in the course of therapeutic work.

7.2.3 No LCSW or employee of such person may disclose any confidential information they may have acquired from persons consulting them in their professional capacity except under the following conditions:

7.2.3.1 With the written consent of the person or persons (the guardian, in the case of a minor) or, in the case of death or disability, of his/her personal representative, or person authorized to sue, or the beneficiary of an insurance policy on his/her life, health or physical condition, or

7.2.3.2 Where the communication reveals the contemplation of a crime or harmful act.

7.2.3.3 When the person waives the privilege by initiating formal charges against the LCSW.

7.2.3.4 When otherwise specifically required by law or judicial order.

7.2.4 The disclosure of confidential information, as permitted by Rule 7.2.3, is restricted to what is necessary, relevant, verifiable and based on the recipients' need to know. The LCSW should, provided it will not adversely affect the client's condition, inform the client about the nature and scope of the information being disclosed, to whom the information will be released and the purpose for which it is sought.

7.3 Ethical Practice

7.3.1 The LCSW is responsible for confining his/her practice to those areas in which he/she is legally authorized and in which he/she is qualified to practice. When necessary the LCSW should utilize the knowledge and experience of members of other professions.

7.3.2 The LCSW is responsible for providing a clear description of what the client may expect in the way of scheduling services, fees and any other charges or reports

7.3.3 The LCSW, or any employee or supervisee of the LCSW, must be accurately identified on any bill as the person providing a particular service, and the fee charged the client should be at the LCSW's usual and customary rate. Sliding fee scales are permissible.

7.3.4 An LCSW employed by an agency or clinic, and also engaged in private practice, must conform to contractual agreements with the employing facility. He/She must not solicit or accept a private fee or consideration of any kind for providing a service to which the client is entitled through the employing facility.

7.3.5 An LCSW having direct knowledge of a colleague's impairment, incompetence or unethical conduct should take adequate measures to assist the colleague in taking remedial action. In cases where the colleague does not address the problem, or in any case in which the welfare of a client appears to be in danger, the LCSW should report the impairment, incompetence or unethical conduct to the Board.

7.3.6 The Board has voted to adopt the Voluntary Treatment Option, in accordance with 29 Del.C. §8807(n).

7.3.7 An LCSW should safeguard the welfare of clients who willingly participate as research subjects. The LCSW must secure the informed consent of any research participant and safeguard the participant's interests and rights.

7.3.8 In advertising his or her services, the LCSW may use any information so long as it describes his/her credentials and the services provided accurately and without misrepresentation.

7.3.9 In the areas of computer and Internet technology and non-established practice, the LCSW should inform the client of risks involved. The LCSW should exercise careful judgment and should take responsible steps (such as research, supervision, and training) to ensure the competence of the work and the protection of the client. All precautions should be taken with computer-based communications to ensure that no confidential information is disseminated to the wrong individual and identities are protected with respect to privacy.

7.4 CLINICAL SUPERVISION

7.4.1 The LCSW should ensure that supervisees inform clients of their status as interns, and of the requirements of supervision (review of records, audiotaping, videotaping, etc.). The client shall sign a statement of informed consent attesting that services are being delivered by a supervisee and that the LCSW is ultimately responsible for the services. This document shall include the supervising LCSW's name and the telephone number where he/she can be reached. One copy shall be filed with the client's record and another given to the client. The LCSW must intervene in any situation where the client seems to be at risk.

7.4.2 The LCSW should inform the supervisee about the process of supervision, including goals, case management procedures, and agency or clinic policies.

7.4.3 The LCSW must avoid any relationship with a supervisee that may interfere with the supervisor's professional judgment or exploit the supervisee.

7.4.4 The LCSW must refrain from endorsing an impaired supervisee when such impairment deems it unlikely that the supervisee can provide adequate professional services.

7.4.5 The LCSW must refrain from supervising in areas outside his/her realm of competence. Statutory Authority: 24 Del.C. §§3901, 3906(1)(6)(9), 3913, 3915.

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation

receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated

professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

8.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

8.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of

Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

8.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

8.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DIVISION OF PROFESSIONAL REGULATION

BOARD OF LICENSED PROFESSIONAL GEOLOGISTS

Statutory Authority: 24 Delaware Code,
Section 3604 (24 Del.C. 3604)

Summary of the Evidence and Information Submitted

1. Exhibit "B" is a letter from Michael Apgar, professional geologist. Mr. Apgar suggested that the vast majority of the geologic work done in Delaware was related to ground water. Mr. Apgar suggested that the Board of Geologists change its criteria concerning the undergraduate education (30 hours of geology credit hours) and that the ASBOG exam cover different material. Mr. Apgar noted that undergraduate institutions have offered multi-disciplinary degrees, such as environmental science and water resource management, that would be more appropriate educational training for the type of geologic work done in Delaware. Mr. Apgar suggested that the Board of Geologist require evidence of training in ground water as a prerequisite to licensure. Mr. Apgar also suggested that work products

be considered for continuing education credit due to the hardship that might be incurred by working professional geologists in meeting education requirements.

Findings of Fact

1. Pursuant to 24 *Del. C.* §3606(1), the Delaware Board of Geologist (the "Board") proposed to revise to its rules and regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein.

2. Pursuant to 29 *Del. C.* §10115, notice was given to the public that a hearing would be held on May 5, 2000, at 10:00 a.m. in Dover, Delaware to consider the proposed amendments.

3. The notice invited the public to submit comments orally or in writing regarding the proposed amendments.

4. A hearing was held on May 5, 2000, at which a quorum of the Board of Geologists was present.

5. The changes made after the hearing and discussion were non-substantive.

6. The Board of Geologists finds the proposed revisions serve to implement or clarify specific sections of 24 *Del. C.* Chapter 36.

Text and Citation

The exact text of the Rules and Regulations hereby promulgated are as it appeared in the Rules and Regulations, Vol. 3, Issue 10 (April 1, 2000) is attached hereto in "Exhibit A" with the changes noted.

Decision

NOW, THEREFORE, based on the Board of Geologists' authority to formulate rules and regulations pursuant to 24 *Del. C.* §3606(1), it is the decision of the Board of Geologists to adopt the proposed revisions to its rules and regulations, a copy of which are attached hereto as Exhibit "A" and incorporated herein. Such regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

IT IS SO ORDERED this 5th day of May, 2000.

Delaware Board of Geologists

K. Elizabeth Brown, President
R. Peder Hansen, Vice-President
Jerome Cooper
Robert R. Jordan, Ph.D.
Bangalore Lakshman
Theodore Ressler
Eric Tinkle

ATTEST:

Mary Paskey, Administrative Assistant to the Board

This is to certify that the above and foregoing is a true and correct copy of the Order of the Delaware Board of Geologists in the Matter of Adoption of Regulations.

- 1.0 Definitions
- 2.0 Code of Ethics
- 3.0 Stamp/Seal Requirements
- 4.0 Licensing Exemptions
- 5.0 Issuing & Renewal of License
- 6.0 Continuing Education
- 7.0 ASBOG Examination
- 8.0 Reciprocity

1.0 Definitions

“Board” shall mean the State Board of Geologists established in 24 Del. C., Ch. 36, §3603.

“Continuing Education Unit” shall mean one contact hour (60 minutes), subject to the Board’s review.

“Five Years of Experience” shall mean:

Experience acquired in geological work as described in the 24 Del. C., Ch. 36, §3602 (5) and (6) and after completion of academic requirements as stated in §3608(a)(1). The Board may discount experience obtained more than ten (10) years prior to the submission of an application. Part-time experience will be granted proportional to full-time credit. Three of the five years of experience must be in a position of responsible charge as defined below

Experience references must be provided by a person knowledgeable and having a background of geological work.

The Board will only consider years of experience documented by references.

“Geologist” shall mean a person who is qualified to practice professional geology including specialists in its various subdisciplines.

“Practice of Geology” shall mean any service or creative work, the adequate performance of which requires geologic education, training and experience in the application of the principles, theories, laws and body of knowledge encompassed in the science of geology. This may take the form of, but is not limited to, consultation, research, investigation, evaluation, mapping, sampling, planning of geologic projects and embracing such geological services or work in connection with any public or private utilities, structures, roads, buildings, processes, works or projects. A person shall be construed to practice geology, who by verbal claim, sign, advertisement or in any other way represents himself or herself to be a geologist, or who holds himself or herself out able to perform or who does perform

geologic services or work.

“Responsible Charge” shall mean the individual control and direction, by the use of initiative, skill and individual judgment, of the practice of geology.

2.0 Code of Ethics

2.1 General Provisions:

2.1.1 A geologist shall be guided by the highest standards of ethics, honesty, integrity, fairness, personal honor, and professional conduct.

2.1.2 A geologist shall not knowingly permit the publication or use of his/her work or name in association with any unsound or illegitimate venture.

2.1.3 A geologist shall not give a professional opinion or make a report without being as completely informed as might be reasonably expected considering the purpose for which the opinion or report is desired. All assumptions on which the results of the report or opinion are based shall be set forth in the report or opinion.

2.1.4 A geologist shall be as objective as possible in any opinion, report or other communication he/she makes which will be used to induce participation in a venture. He/she shall not make sensational, exaggerated, or unwarranted statements. He/she shall not misrepresent data, omit relevant data, or fail to mention the lack of data that might affect the results or conclusions of such opinion, report or communication.

2.1.5 A geologist shall not falsely or maliciously attempt to injure the reputation or business of another geologist.

2.1.6 A geologist shall freely give credit for work done by others. A geologist shall not knowingly accept credit rightfully due to others or otherwise indulge in plagiarism in oral and written communications.

2.1.7 A geologist, having knowledge of the unethical or incompetent practice of another geologist, shall avoid association with that geologist in professional work. If a geologist acquires tangible evidence of the unethical or incompetent practice of another geologist, he/she shall submit the evidence to the Board.

2.1.8 A geologist shall not use the provisions of 24 Del. C., Ch. 36 or the Board’s regulations to maliciously prosecute, harass or otherwise burden another geologist with unfounded or false charges.

2.1.9 A geologist shall endeavor to cooperate with others in the profession in encouraging the ethical dissemination of geological knowledge—especially when it is in the public interest.

2.1.10 A geologist shall not engage in conduct that involves fraud, dishonesty, deceit or misrepresentation either directly or through the action of others.

2.1.11 A geologist shall not discriminate against any person on the basis of race, creed, sex or national origin.

2.1.12 A geologist shall not aid any person in the

unauthorized practice of geology.

2.1.13 A geologist shall not practice geology in a jurisdiction where that practice would violate the standards applicable to geologists in the jurisdiction.

2.2 Provisions Concerning Monetary Matters

2.2.1 A geologist having, or expecting to have, any interest in a project or property on which he/she performs work, must make full disclosure of the interest to all parties concerned with the project or property.

2.2.2 A geologist's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

2.2.2.1 the time and labor required, the novelty and difficulty of the work involved, and the skill requisite to perform the service properly;

2.2.2.2 the likelihood, if apparent to the client or employer, that the acceptance of the particular employment will preclude other employment of the geologist;

2.2.2.3 the fee customarily charged in the area for similar geological services;

2.2.2.4 the total value of the project and the results obtained;

2.2.2.5 the time limitations imposed by the client or by the circumstances;

2.2.2.6 the nature and length of the professional relationship with the client;

2.2.2.7 the experience, reputation, and ability of the geologist or geologists performing the service; and

2.2.2.8 whether the fee is fixed or contingent.

2.2.3 When the geologist has not regularly performed services for the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing services.

2.2.4 A fee may be contingent on the outcome of a project for which geological services are rendered, except for a project where a contingent fee is prohibited by law or professional ethics. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined.

2.2.5 A division of fee between geologist and other professionals who are not associated may be made only if:

2.2.5.1 the division is in proportion to the services performed by each geologist or professional or, by written agreement with the client. Each geologist or professional assumes joint responsibility for the services performed;

2.2.5.2 the client is advised of and does not object to the participation of the geologist and/or other professionals involved; and

2.2.5.3 the total fee is reasonable.

2.2.6 A geologist shall not accept a concealed

fee for referring an employer or client to a specialist or for recommending geological services other than his/her own. A geologist who engages or advises a client or employer to engage collateral services shall use his/her best judgement to ensure the collateral services are used prudently and economically.

2.3 Provisions Concerning The Relationship With The Client

2.3.1 A geologist shall not undertake, or offer to undertake, any type of work with which he/she is not familiar or competent by reason of lack of training or experience unless he/she makes full disclosure of his/her lack of training or experience to the appropriate parties prior to undertaking the work.

2.3.2 A geologist shall protect to the fullest extent the employer or client's interest, so far, as is consistent with the public welfare and professional obligations and ethics.

2.3.3 A geologist who finds that an obligation to an employer or client conflicts with professional obligations or ethics should have the objectionable conditions changed or terminate the services.

2.3.4 A geologist shall not use either directly or indirectly any proprietary information which is developed or acquired as a result of working for an employer or client in any way that conflicts with the employer's or client's interest and without the consent of the employer or client.

2.3.5 A geologist who has worked or performed a service for any employer or client shall not use the information peculiar to that employment and which is gained in such employment for his/her own personal profit unless he/she is given written permission to do so or until the employer, client, or their successor's interest in such information has changed in such a way that the information is valueless to him/her or of no further interest to him/her.

2.3.6 A geologist shall not divulge confidential information. This does not relieve a licensed geologist from the duty to report conditions required by law or regulation.

2.3.7 A geologist retained by a client shall not accept, without the client's consent, an engagement by another if there is a possibility of a conflict between the interest of the two clients.

2.3.8 A geologist shall advise an employer or client to retain, and cooperate with, other experts and specialists whenever the employer's or client's interests are best served by such services.

2.3.9 A geologist shall not terminate services to an employer or client when it will cause immediate jeopardy to the employer's or client's interests. The geologist shall attempt to give due notice of termination; however, the geologist may terminate services under any of the following circumstances:

2.3.9.1 failure to receive compensation or good evidence indicating compensation will not be received

for services performed;

2.3.9.2 when continued employment will result in a violation of 24 Del. C., Ch. 36 or other illegality;

2.3.9.3 when continued employment will result in sickness or injury to the geologist or his/her dependents.

2.3.10 A geologist shall not use or abuse drugs, narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician. A geologist shall also not abuse alcoholic beverages such that it impairs his/her ability to perform his/her work

3.0 Stamp/Seal Requirements

3.1 The stamp or seal authorized by the Delaware State Board of Geologists shall be of the design shown here and shall not be less than one and one-half (1 ½) inches in diameter. It may be purchased by the licensee from any convenient source.

3.2 All reports, drawings, maps, or similar technical



submissions involving the practice of geology that have been prepared, or reviewed and approved, by a licensed geologist and that will become a matter of public record, or relied upon by any person, within this state for geological purposes, shall be impressed with the stamp or seal. The stamp or seal will indicate that the licensee has accepted responsibility for the work.

3.3 Any licensee who affixes, or allows to be affixed, his/her seal or name to a document or report is responsible for all work contained therein regardless of whether such work has been performed by the geologist or a subordinate.

3.4 No person shall stamp or seal any plans, reports, specifications, plats or similar technical submissions with the stamp or seal of a geologist or in any manner use the title "geologist," unless such person is duly licensed in compliance with 24 Del. C., Ch. 36.

3.5 No person shall stamp or seal any plans, specifications, plats, reports, or a similar document with the stamp or seal of a licensed geologist if his/her license has been suspended, revoked or has expired.

3.6 Computer files of reports, drawings or similar technical work involving the practice of geology and that will become a matter of public record or relied upon by any person shall include the following statement:

This submission is made in compliance with 24 Del. C., Ch. 36 by (name) _____, P.G., DE license number _____ on this date _____.

4.0 Licensing Exemption

4.1 Any person who claims exemption from the provisions of 24 Del. C., Ch. 36 under §3617(a), shall be entitled to such exemption so long as his/her remuneration from the practice of geology is solely related to a teaching function. If such remuneration is processed through his/her academic unit, it shall be considered prima facie evidence of the fact that such work is related to his/her teaching. Any person claiming such exemption shall, in a conspicuous manner at the conclusion of any report or study bearing his/her name, include the statement:

"I hereby claim exemption from the requirements of 24 Del. C., Ch. 36 (Delaware Professional Geologist Act) and am not subject to the provisions of that Act and the standards and regulations adopted pursuant thereto."

Such a disclaimer shall not be required on reports or studies submitted solely to refereed professional journals for publications.

Any other geologic work, including consulting, not directly related to educational activities, shall not be considered exempt.

5.0 Issuance and Renewal of License

5.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 Del. C., Ch. 36.

5.2 Renewal may be effected by:

5.2.1 filing a renewal form prescribed by the Board and provided by the Division of Professional Regulation;

5.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;

5.2.3 submission of evidence of continuing education on a form prescribed by the Board and provided by the Division of Professional Regulation as described in regulation five;

5.2.4 payment of fees as determined by the Division of Professional Regulation.

5.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A geologist whose license has expired may renew his/her license within one year after the expiration date upon fulfilling items 5.2.1 - 5.2.4 above, certifying that he/she has not practiced geology in Delaware

while his/her license has expired, and paying the renewal fee and a late fee which shall be 50% of the renewal fee.

5.4 No geologist will be permitted to renew his/her license once the one-year period has expired.

5.5 The former licensee may re-apply under the same conditions that govern applicants for licensure under 24 Del. C., Ch. 36.

5.6 No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license has expired.

6.0 Continuing Education

6.1 The Board will require continuing education as a condition of license renewal. Continuing education shall be waived for the first licensure renewal following the effective date of the Board's Rules and Regulations.

6.2 The continuing education period will be from August 1st to July 31st of each biennial licensing period.

6.3 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random audit and verification purposes 60 days prior to renewal. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

6.4 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.

6.5 Continuing education shall be prorated for new licensees in the following manner:

6.5.1 If at the time of renewal, a licensee has been licensed for less than one year, no continuing education is required; if he/she has been licensed for more than one year, but less than two years, twelve of the twenty-four hours will be required; if he/she has been licensed for two years or more the full twenty-four hours is required.

6.6 In his/her personal records, each licensee must keep proof of attendance for each activity listed on the CE log form. If the Board conducts an audit of a licensee's CE records, the Board will request the licensee's documentation of attendance to the CE event listed on the form. Failure to

submit proof of attendance during an audit will result in loss of CE credit for that event.

6.7 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two-(2) year period may not be carried over to the next biennial period.

6.8 Categories of Continuing Education & Maximum Credit Allowed:

6.8.1 Courses – 24 CEUs

6.8.2 Professional Meetings & Activities/Field Trips – 12 CEUs

6.8.3 Peer Reviewed Publications – 12 CEUs

6.8.4 Presentations – 12 CEUs

6.8.5 Research/Grants – 12 CEUs

6.8.6 Specialty Certifications – 12 CEUs

6.8.7 Home Study Courses – 12 CEUs

6.8.8 Teaching – 12 CEUs

6.8.9 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs

6.8.10 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.

6.9 Automatic Approval for course work sponsored by the following Professional Societies:

6.9.1 American Association of Petroleum Geologists (AAPG)

6.9.2 American Association of Stratigraphic Palynologists (AASP)

6.9.3 American Geological Institute (AGI)

6.9.4 American Geophysical Union (AGU)

6.9.5 American Institute of Hydrology (AIH)

6.9.6 American Institute of Professional Geologists (AIPG)

6.9.7 Association of American State Geologists (AASG)

6.9.8 Association of Earth Science Editors (AESE)

6.9.9 Association of Engineering Geologists (AEG)

6.9.10 Association of Ground Water Scientists & Engineers (AGWSE)

6.9.11 Association of Women Geoscientists (AWG)

6.9.12 Clay Mineral Society (CMS)

6.9.13 Council for Undergraduate Research-Geology Div. (CUR)

6.9.14 Geologic Society of America (GSA)

6.9.15 Geoscience Information Society (GIS)

6.9.16 International Association of Hydrogeologists/US National Committee (IAH)

6.9.17 Mineralogical Society of America (MSA)

6.9.18 National Association of Black Geologists and Geophysicists (NABGG)

6.9.19 National Association of Geoscience Teachers (NAGT)

6.9.20 National Association of State Boards of Geology (ASBOG)

6.9.21 National Earth Science Teachers Association (NESTA)

6.9.22 National Speleological Society (NSS)

6.9.23 Paleontological Research Institution (PRI)

6.9.24 Paleontological Society (PS)

6.9.25 Seismological Society of America (SSA)

6.9.26 Society of Economic Geologists (SEG)

6.9.27 Society of Exploration Geophysicists (SEG)

6.9.28 Society of Independent Professional Earth Scientists (SIPES)

6.9.29 Society for Mining, Metallurgy, and Exploration, Inc. (SME)

6.9.30 Society for Organic Petrology (TSOP)

6.9.31 Society for Sedimentary Geology (SEPM)

6.9.32 Society of Vertebrate Paleontology (SVP)

6.9.33 Soil Science Society of America (SSSA)

6.9.34 Other professional or educational organizations as approved periodically by the Board.

6.10 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.

7.0 ASBOG Examination

7.1 An applicant for examination and qualification for a license as a Geologist shall make application in writing, on forms provided by the Board, and shall furnish evidence satisfactory to the Board that he/she has met the pre-examination requirements as provided for 24 Del. C., Ch. 36, §3608.

7.2 An applicant for licensure must have satisfactorily passed each part of the ASBOG examination with a scaled score of not less than 70%.

7.3 An applicant's approval to sit for the ASBOG exam shall be valid for a period not to exceed two years.

8.0 Reciprocity

8.1 Applicants applying for licensure by reciprocity must submit the state law and rules and regulations from at least one state in which they have been licensed. The Board will review these documents for substantial similarity to Delaware's state law and rules and regulations.

8.2 Applicants, who were originally licensed in another jurisdiction after June 17, 1998, will be required to have a passing score (70%) on each part of the ASBOG examination.

DIVISION OF PROFESSIONAL REGULATION

GAMING CONTROL BOARD

Statutory Authority: 28 Delaware Code,
Section 1503 (28 Del.C. 1503)

Order

Pursuant to 29 Del.C. §10118, the Delaware Gaming Control Board ("Board") hereby issues this Order adopting a proposed amendment to Bingo Regulation 1.03(10). Following notice as required by 29 Del.C. §10115, the board makes the following findings and conclusions:

Summary of Evidence and Information Submitted

1. The Board posted public notice of the proposed rule amendments in the March 1, 2000 Register of Regulations. A copy of the proposed rule amendment is attached to this Order as exhibit #1. The Board proposed to amend its Bingo Regulations to promulgate a new Regulation 1.03(10). The proposed Regulation 1.03(10) would require a bingo applicant to provide full and fair description of the prize to be awarded and the appraised value of the prize. The proposed amendment would also permit the Board to require and independent appraisal of a prize.

2. On April 6, 2000, the board conducted a public hearing on the proposed rule amendment. The Board received as evidence a written memorandum from Carol Ellis, Director of the Division of Professional Regulation. In the memorandum, Ms. Ellis requested that the proposed rule be changed to add a second sentence providing: "In lieu of submitting an appraisal, the applicant or licensee may submit full retail value of the prize." Ms. Ellis stated at the public hearing that the proposed revision would provide allow the Division's staff to provide clarification to bingo license applicants.

Findings of Fact

3. The public was given notice and an opportunity to provide the Board with comments in writing on the proposed amendments to the Board's rules. A summary of the evidence received is described in paragraph #2.

4. The Board finds that Rule 1.03(10) should not be adopted in its current form. The Board finds that Rule 1.03(10) should be amended in the form proposed at the public hearing Ms. Ellis.

Conclusions

5. The proposed amendment to the Bingo Regulations was promulgated by the Board in accord with its statutory duties as set forth in 28 Del.C. §1138.

6. The Board will not adopt the proposed amendment to Bingo Regulation 1.03(10) and instead will issue a new proposed revision. The Board will consider a new proposed Rule 1.03(10) to provide as follows:

1.03 Bingo Licenses

...

(10) The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

7. The Board issues this Order pursuant to 28 Del.C. §1138 and 29 Del.C. §10113. The effective date of this Order shall be ten (10) days from the publication of this Order in the Register of Regulations on June 1, 2000.

IT IS SO ORDERED this 4th day of May, 2000.

Frank Long, Chairman
Kathy Harron
Ronald Mosher
Roland Neeman
Leroy Rench

DEPARTMENT OF AGRICULTURE

PESTICIDES SECTION

Statutory Authority, 3 Delaware Code,
Section 1237 (3 Del.C. 1237)

In accordance with the authority vested in the State of Delaware, Department of Agriculture, to establish rules and procedures for the enforcement of the Delaware Pesticide Law, Title 3, Delaware Code, Chapter 12, the amendments to the Delaware Pesticide Rules and Regulations, as published in the Delaware Register, Volume 3, Issue 10, April 1, 2000, are promulgated. Also, the Department is adopting Document # 65/01/06/00/01/01 as the disclosure form prescribed for certain applications of termiticides under Section 22 of the Rules. The effective date of these amendments shall be June 15, 2000.

John F. Tarburton
Secretary of Agriculture
May 2, 2000

SECTION 1 GENERAL

1.01 Scope

These regulations establish general operating rules and procedures for the enforcement of the Delaware Pesticide Law, including but not limited to the certification of users of restricted and general use pesticides.

1.02 Authority

These regulations are issued under the authority of TITLE 3 PART II CHAPTER 12 of the Annotated Code of Delaware.

1.03 Effective Date

These regulations were amended on February 10, 1999, in accordance with Title 29, Chapter 101, Annotated Code of Delaware

1.04 Filing Date

These regulations were filed in the Office of the Secretary of State on February 10, 1999.

SECTION 2 DECLARATION OF POLICY

3 Del.C. Part II, Chapter 12, Section 1237, places the enforcement of the Delaware Pesticide Law with the Department of Agriculture and empowers the Department to establish regulations.

By virtue of the authority vested in me as Secretary of Agriculture by 3 Del.C. Part II, Chapter 12, I, John F. Tarburton, Secretary of Agriculture, do hereby promulgate the following rules and regulations governing the sale, use and application of pesticides in Delaware.

SECTION 3 DEFINITIONS

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise. All terms defined by the Delaware Pesticides Law (3 Del.C., Part II, Chapter 12) are hereby incorporated by reference in this regulation.

“Accident” means an unexpected, undesirable event resulting in the presence of a pesticide that adversely affects man or the environment.

“Brand” means any word, name, symbol, device, or any combination thereof, which serves to distinguish a pesticide product manufactured, distributed, sold, or offered for sale by one person from that manufactured, distributed, sold, or offered for sale by any other person.

“Certification” means the recognition by the Department that a person has met the qualification standards established under Section 8 or Section 9 of these regulations and has been issued a written certificate from the Department authorizing them to use pesticides for the specified type(s) of pest control.

“Competent” means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and associated responsibility.

“Fumigant” means a gaseous or readily volatilizable chemical (such as hydrogen cyanide or methyl bromide) used as a pesticide.

“Fumigation” means the application of a fumigant to one or more rooms in a structure, or to the entire structure, or to a localized space within a structure or outside a structure, such as a box car, aircraft, truck, ship or any object sealed or covered. Excluded is the use of a fumigant in or on the soil.

“Grade” means a formulation of a pesticide, except that the addition of pigments solely for coloration shall not constitute a change in formulation such as to constitute a new grade requiring registration.

“Handle pesticides” means to mix, load, apply, or dispose of pesticides.

“Hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, irreversible illness or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes listed in Section 261.31, 261.32 and 261.33 of the State of Delaware Hazardous Waste Regulations and those solid wastes which otherwise exhibit the characteristics of a hazardous waste as defined in Part 261 of the State of Delaware Hazardous Waste Regulations.

“LAW” means the Delaware Pesticide Law, 3 Del.C., Part II, Chapter 12.

“Regulated pest” means a specific organism considered by the state or by a Federal Agency to be a pest requiring regulatory restrictions, regulations or control procedures in order to protect man or the environment.

“Service vehicle” means any vehicle used by a licensee to transport pesticides for the purpose of their application.

SECTION 4 REGISTRATION

4.01 PRODUCT REGISTRATION

(a) Every pesticide which is distributed within the State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered with the Secretary

subject to the provisions of this law. ~~Such registration shall be renewed annually prior to July 1; provided, that R~~ registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part ~~to make of~~ a pesticide which is registered under the provision of an experimental use permit issued by the U.S. Environmental Protection Agency.

(b) ~~The An~~ applicant for registration for a pesticide which is federally registered shall file a statement with the Secretary which shall include:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's.

(2) The name of the pesticide.

(3) Other necessary information required for completion of the Department's application for registration form.

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use.

(5) The use classification as provided in the "Federal Insecticide, Fungicide and Rodenticide Act", as amended.

(6) The EPA product registration number.

(c) The applicant desiring to register a pesticide shall pay ~~an annual registration fee of twenty five dollars (\$25.00)~~ a biennial registration fee of seventy dollars (\$70.00) to the Delaware Department of Agriculture for each brand or grade of pesticide to be registered for such applicant. All ~~such~~ registrations shall ~~expire on June 30 of any one year~~ continue in effect until June 30 of the year in which they expire. Applications received between January 1 and June 30 shall be registered for the upcoming two year period. Applications received between July 1 and December 31 will be registered for a two year period beginning July 1 of the year in which the application was received.

(d) Any registration approved by the Secretary and in effect on June 30, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until suspended, or otherwise denied in accordance with the provisions of Section 1205 of ~~this law~~ the LAW. Forms for registration shall be mailed to registrants at least forty-five days prior to the due date.

(e) If it appears to the Secretary that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of ~~this law~~ these regulations, he shall register the pesticide.

(f) Pesticide products that are discontinued by a registrant shall be registered for a period of two years. Said two year limit covers the year in which the item is declared to be discontinued by the registrant and an additional year to permit time to dispose of shelf stock. Should the registrant

provide the Department with written notification that shelf stocks of the product are depleted, the products shall be exempt from the two year continued registration period.

4.02 EMPLOYEE REGISTRATION

(a) Every licensee shall register with the Department all employees who handle pesticides. Registration shall be made when making an application for a license or within 30 days after employment. The fee for registering each employee shall be \$25.00. However, the fee shall be waived for any employee registration if that employee is certified under the LAW.

(b) Each licensee shall be responsible for insuring that all employees handling pesticides (other than a certified applicator) have successfully completed a training program approved by the Department. Such training shall be completed within 30 days of employment and before the employee is registered with the Department.

1. The Department will not approve any training program that does not include the following subjects:

- (i) Pesticide Law and Regulations;
- (ii) Label comprehension;
- (iii) Safety and emergency procedures;
- (iv) Proper pesticide handling, storage and disposal;
- (v) Pest identification and control procedures;
- (vi) Pesticide application techniques;
- (vii) Environmental and health concerns; and
- (viii) Integrated pest management principles

2. Upon request by the Department, each licensee shall provide written verification that an employee has completed an approved training program.

(c) The name and address of each such employee shall be provided to the Department by the licensee. The Department shall issue a registration card to those registered. This registration card shall bear the name and license number of the employee and shall become null and void upon termination of employment with the licensee. This card is to be carried by the employee during working hours and is to be displayed upon request.

(d) Written notification of employment termination of this registered employee with the licensee shall be made to the Department within 30 days subsequent to termination.

(e) The Department, after due notice, and opportunity for a hearing may deny, suspend or revoke an employee registration, if the Department finds the registered employee has committed any violations of the LAW.

(f) The Department, after due notice and opportunity for a hearing, may deny an application for employee registration, if the applicant has committed any violations under the LAW.

SECTION 5 LICENSING

5.01 ~~All business licensee applicants shall pay an annual fee of \$50.00.~~

Applicants for a business license shall complete a signed and notarized application form prescribed by the Department.

5.02 ~~All pest control business license numbers shall appear on all service vehicles used by persons holding a commercial pesticide applicators license excluding: 7.01 (a) Agriculture Plant Pest Control; 7.01 (b) Agriculture Animal Pest Control; 7.02 Forest Pest Control; 7.04 Seed Treatment; 7.05 Aquatic Pest Control; 7.08 Public Health Pest Control; 7.09 Regulatory Pest Control; 7.10 Demonstration and Research Pest Control. The license number shall be in bold readable numbers not less than 2 inches or more than 6 inches high. The full name of the business licensee shall be displayed on the vehicle.~~

All business license applicants shall pay an annual fee of \$50.00, or a biennial fee of \$100.00.

5.03 No license shall be issued to any person, nor shall it remain valid, unless such person is certified or has a certified applicator in his employ at all times.

5.04 For applicants or holders of a license in categories 7.01(a), 7.02, or 7.07(a-c), at least one person designated as a certified applicator under the license shall meet the experience requirement of §1207(c)(1) of the LAW.

5.05 All pest control business license numbers shall appear on all service vehicles used by persons holding a commercial pesticide applicators license excluding with the exception of categories: 7.01(a) Agriculture Plant Pest Control; 7.01(b) Agriculture Animal Pest Control; 7.02 Forest Pest Control; 7.04 Seed Treatment; 7.05 Aquatic Pest Control; 7.08 Public Health Pest Control; 7.09 Regulatory Pest Control; 7.10 Demonstration and Research Pest Control. The license number shall be in bold readable numbers not less than 2 inches or more than 6 inches high. The full name of the business licensee shall be displayed on the vehicle.

SECTION 6 RESTRICTED USE PESTICIDES CLASSIFICATION

6.01 Restricted use pesticides shall be classified in the State of Delaware to conform to the current listing of pesticides classified by the EPA as Federally registered use products.

SECTION 7 CATEGORIZATION OF COMMERCIAL APPLICATORS

Categories and subcategories of applicators (other than private applicators) who use or supervise the use of pesticides are identified below.

7.01 AGRICULTURAL PEST CONTROL CATEGORY

(a) **AGRICULTURAL PLANT** - This subcategory includes commercial applicators using or supervising the use of pesticides in the production of agricultural crops, including without limiting the following: feed grains, soybeans, forage, vegetables, small fruits and tree fruits; as well as on grasslands and non-crop agricultural lands.

(b) **AGRICULTURAL ANIMAL** - This subcategory includes commercial applicators using or supervising the use of pesticides on swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, or publicly holding themselves out as pesticide applicators or engaged in large scale use are included in this category.

(c) **FUMIGATION OF SOIL AND AGRICULTURAL PRODUCTS** - This subcategory includes commercial applicators using or supervising the use of pesticides for soil fumigation in the production of an agricultural commodity and/or for fumigation of agricultural products in storage or transit.

7.02 FOREST PEST CONTROL CATEGORY

This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed producing areas.

7.03 ORNAMENTAL AND TURF PEST CONTROL CATEGORY

This category includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

7.04 SEED TREATMENT CATEGORY

This category includes commercial applicators using or supervising use of pesticides on seeds.

7.05 AQUATIC PEST CONTROL CATEGORY

(a) **AQUATIC WEED** - This subcategory includes commercial applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities.

(b) **ANTI FOULING PAINT** - This subcategory includes commercial applicators using or supervising the use

of any anti-fouling paints for the protection of boat hulls. This subcategory also includes applicators using or supervising the use of anti-fouling paints on containers which they sell, lease, or use for the purpose of harvesting shellfish.

(c) **MOSQUITO CONTROL** - This subcategory includes applicators using or supervising the use of pesticides for the management and control of mosquitoes.

7.06 RIGHT-OF-WAY PEST CONTROL CATEGORY

This category includes commercial applicators using or supervising the use of pesticides in the maintenance of roads, electric power lines, pipelines, railway rights-of-way or similar areas.

7.07 INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST CONTROL CATEGORY

This category includes commercial applicators using or supervising the use of pesticides in, on, or around food handling establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; human dwellings, institutions, such as schools and hospitals, industrial establishments; and for the protection of stored, processed or manufactured products. This category contains the following subcategories:

(a) **GENERAL PEST CONTROL** - This subcategory includes commercial applicators who use or supervise the use of pesticides to control household pests, including pests that infest structures, stored products, and residential food preparation areas, and pests that infest or contaminate food and any stage of processing in food processing facilities. This includes treatment of food processing areas and control of vertebrate structural invaders. This category does not include control of wood-destroying pests, or the use of fumigants.

(b) **WOOD DESTROYING PEST CONTROL** - This subcategory includes commercial applicators using or supervising the use of pesticides, other than fumigants, in or around structures for the prevention, suppression, or control of wood destroying organisms.

(c) **FUMIGATION PEST CONTROL (non-agricultural)** - This subcategory includes commercial applicators using or supervising the use of fumigant pesticides to control pests in structures other than soils and agricultural products/commodities.

(d) **WOOD PRESERVATIVES** - This subcategory includes commercial applicators using or supervising the use of pesticides for the preservation of wood or wood products. This would include, but not be limited to, the pressure treatments, non-pressure treatments, or brush-on applications with wood preservatives. Commercial applicators certified in another category of pest control and who use or supervise the use of wood preservatives on an

incidental basis may apply these products under their current certification. Private applicators using wood preservative products for purposes related to agricultural production may also apply wood preservatives under their current certification.

(e) **INSTITUTIONAL AND MAINTENANCE PEST CONTROL** - Except as otherwise provided in these regulations, this subcategory includes any individual using pesticides on a property they own, or are employed or otherwise engaged to maintain, including but not limited to janitors, general maintenance personnel, sanitation personnel, and grounds maintenance personnel. This subcategory does not include private applicators as defined in Section 9 below, individuals who use anti-microbial pesticides, or individuals who use pesticides which are not classified as "restricted use pesticides" in or around their dwelling.

(f) **COOLING TOWER PEST CONTROL** - This subcategory includes commercial applicators using or supervising the use of pesticides to control microbial and other pests in cooling towers or related areas.

(g) **MISCELLANEOUS PEST CONTROL** - This subcategory includes commercial applicators using or supervising the use of pesticides in a category not previously covered in these regulations.

7.08 PUBLIC HEALTH PEST CONTROL CATEGORY

This category includes, but is not limited to, State, Federal and other governmental employees who use or supervise the use of pesticides in public health programs for the management and control of pests having medical or public health importance.

7.09 REGULATORY PEST CONTROL CATEGORY

This category includes State, Federal and other governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests.

7.10 DEMONSTRATION AND RESEARCH PEST CONTROL CATEGORY

This category includes:

(a) Individuals who demonstrate to the public the proper use and technique of application of a restricted use pesticide or supervises such demonstrations, and/or

(b) Persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes State, Federal, commercial and other persons conducting field research when utilizing pesticides.

SECTION 8 STANDARDS FOR CERTIFICATION OF COMMERCIAL APPLICATORS

8.01 DETERMINATION OF COMPETENCY

(a) Competence in the use and handling of pesticides shall be determined on the basis of written examinations, and, as appropriate, performance testing, based upon standards set forth below and which are approved by the Secretary. Such examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified. All examinations shall be administered as closed book examinations.

(b) Applicants for examination shall register at least one (1) week before the scheduled examination date.

(c) Exams shall be scheduled quarterly during the calendar year and shall be given at such times and places as the Secretary may direct.

(d) Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

(e) Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. Applicant may apply for one (1) reexamination scheduled at least thirty (30) days after their initial examination. No person shall be permitted to be examined in the same category or subcategory more than twice in any twelve (12) month period.

8.02 GENERAL STANDARDS FOR ALL CATEGORIES OF CERTIFIED COMMERCIAL APPLICATORS

All commercial applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification and the following areas of competency:

(a) LABEL & LABELING COMPREHENSION

(1) The general format and terminology of pesticide labels and labeling;

(2) The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;

(3) Classification of the product, general or restricted; and the necessity for use consistent with the label.

(b) SAFETY

(1) Pesticides toxicity and hazard to man and common exposure routes;

(2) Common types and causes of pesticides accidents;

(3) Precautions necessary to guard against injury to applicators and other individuals in or near treated area;

(4) Need for and use of protective clothing and equipment;

(5) Symptoms of pesticide poisoning;

(6) First aid and other procedures to be followed in case of a pesticide accident; and

(7) Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(c) ENVIRONMENT

The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

(1) Weather and other climatic conditions;

(2) Types of terrain, soil or other substrate;

(3) Presence of fish, wildlife and other non-target organisms; and

(4) Drainage patterns.

(d) PESTS

Factors such as:

(1) Common features of pest organism and characteristics of damage needed for pest recognition;

(2) Recognition of relevant pests; and

(3) Pest development and biology as it may be relevant to problem identification and control.

(e) PESTICIDES

Factors such as:

(1) Types of pesticides;

(2) Types of formulations;

(3) Compatibility, synergism, persistence and animal and plant toxicity of the formulations;

(4) Hazards and residues associated with use;

(5) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and,

(6) Dilution procedures.

(f) EQUIPMENT

Factors including:

(1) Types of equipment and advantages and limitations of each type; and

(2) Uses, maintenance and calibration.

(g) APPLICATION TECHNIQUES

Factors including:

(1) Methods or procedures used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;

(2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(3) Prevention of drift and pesticide loss into the environment.

(h) LAWS AND REGULATIONS

Factors including:

Applicable State and Federal laws and regulations.

8.03 SPECIFIC STANDARDS FOR COMPETENCY FOR EACH CATEGORY OF COMMERCIAL APPLICATORS

Some of the factors referenced in this section are of particular importance because of the different types of activities carried out by the applicators in each category. For example, practical knowledge of drift problems should be required of agricultural applicators but not seed treatment applicators. The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques. Commercial applicators in each category shall be particularly qualified with respect to the practical knowledge standards elaborated below.

(a) AGRICULTURAL PEST CONTROL CATEGORY

(1) AGRICULTURAL PLANT PEST CONTROL SUBCATEGORY

Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

(2) AGRICULTURAL ANIMAL PEST CONTROL SUBCATEGORY

Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

(3) FUMIGATION OF SOIL AND AGRICULTURAL PRODUCTS SUBCATEGORY

Applicators must demonstrate knowledge of application techniques appropriate to soil fumigation and agricultural product fumigation. This includes the use of personal protective clothing and equipment, and general safety procedures such as posting, reentry, aeration, and accident procedures.

(b) FOREST PEST CONTROL CATEGORY

Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and forest seed production in Delaware and the pests involved. They should possess practical knowledge of the cyclic occurrence of

certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must, therefore, demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(c) **ORNAMENTAL AND TURF PEST CONTROL CATEGORY**

Applicators shall demonstrate knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(d) **SEED TREATMENT CATEGORY**

Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

(e) **AQUATIC PEST CONTROL CATEGORY**

(1) **AQUATIC WEED** - Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this subcategory. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall also demonstrate practical knowledge of the principles of limited area application.

(2) **ANTI FOULING PAINT** - Applicators in this subcategory shall demonstrate practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of marine anti-fouling paints. They shall demonstrate practical knowledge of the term "acceptable release rate" as it applies to organotin paints; knowledge of the types of paints approved for specific hull types; knowledge of the types of anti-fouling paints approved for use on equipment or containers used for

the harvesting of shellfish; knowledge of potential environmental consequences from the use/misuse or improper disposal of pesticides; safety precautions necessary to avoid exposure of workers to anti-fouling paints; proper storage, handling, and disposal methods of paint chips and dusts suspected of containing organotin compounds; marine pests and relevant life cycles which are controlled through the application of anti-fouling paints; methods, procedures, and equipment used in applying organotin and anti-fouling paints; applicable State and Federal laws and regulations; and recordkeeping requirements under the Delaware Pesticide Law.

(3) **Mosquito Control** - Applicators shall demonstrate a practical knowledge of the principles associated with the management of mosquitoes, including all of the following: their life cycle; types of formulations appropriate for their management; methods of application; possible effects on water quality; and, the potential health effects on humans in the target area.

(f) **RIGHT-OF-WAY PEST CONTROL CATEGORY**

Applicators shall demonstrate a practical knowledge of a wide variety of environments, since right-of-ways can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

(g) **INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST CONTROL CATEGORY**

Applicators in this category must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulation appropriate for their control, and methods of application that avoid contamination of food, contamination of habitat, and the exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition including continuous exposure. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.

(1) **GENERAL PEST CONTROL SUBCATEGORY**

Applicators must demonstrate knowledge of household pests including but not limited to: pests that invade or infest structures, stored products, and residential food preparation areas; pests that infest or contaminate foods and foodstuffs at any stage of processing in the food

manufacturing and processing areas of operation including but not limited to: flour mills, bakeries, bottling plants, dairies, canneries, meat packing plants, supermarkets, convenience stores, rest homes, hospitals, ships, vehicles, restaurants, cafeterias, and snack bars; conditions conducive to infestations and selection of appropriate control procedures, other than fumigation for each situation; and hazards associated with pesticides in food manufacturing and processing.

(2) WOOD DESTROYING PEST CONTROL SUBCATEGORY

Applicators must demonstrate knowledge of organisms that destroy structures made of wood including but not limited to beetles, termites and fungi, and conditions conducive to infestation; selection, calibration, and use of appropriate control procedures and their related equipment including: rodding and trenching, topical application of pesticides and local injection of specially labeled liquid or pressurized aerosol pesticides into infested wood; hazards involved in the handling and use of these pesticides.

(3) FUMIGATION (NON-AGRICULTURAL) SUBCATEGORY

Applicators must demonstrate a practical knowledge of the conditions requiring the application of fumigants, and the selection of the most appropriate fumigation methods to use; equipment used in fumigation including but not limited to application, monitoring, testing, calculating, and personal protective devices; release, distribution, and maintenance of the correct fumigant concentrations for the product being used and the structure being fumigated under differing conditions; and hazards involved in the use of fumigants.

(4) WOOD PRESERVATIVE SUBCATEGORY

Applicators must demonstrate a practical knowledge of the pests involved with wood products, including their life cycles, wood degradation, the pesticides available for controlling such problems, and methods of application including pressure, non-pressure and brush-on treatments. Since there is concern regarding the potential for environmental contamination as well as acute and chronic health problems from applicator exposure when using certain woodtreating pesticides, specific emphasis will be placed upon demonstrating a practical knowledge of the product use, precautions which are required and found on the labels and labeling of these pesticides and include protective clothing and equipment, sanitation procedures, disposal procedures and environmental precautions. Since treated wood products present potential environmental problems and acute and chronic exposure problems to the users and the general public, whether or not they come into direct contact with the treated wood, applicators must demonstrate a practical knowledge of the consumer information covering use, site, and handling precautions which are found in the Consumer Information Sheets of

products registered for pressure treatment and in the labeling for products registered for sap and stain control, ground line treatment of utility poles, and home and farm use (including railroad tie repair).

(5) INSTITUTIONAL AND MAINTENANCE SUBCATEGORY

Applicators in this subcategory must demonstrate a practical knowledge of a wide variety of pests for the purpose of providing structural pest control or lawn pest control in and around schools, hospitals, nursing homes, child day-care centers, and apartment buildings. Since children and elderly people have a potentially higher sensitivity to pesticides, applicators in this subcategory should be particularly knowledgeable in avoiding applications which may lead to a hazardous condition, including continuous exposure.

(6) COOLING TOWER SUBCATEGORY

Applicators shall demonstrate a practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of pesticides to treat the waters of cooling towers. They must demonstrate an understanding of the following: the effects of tower operation upon cooling water composition; the importance and potential harm of discharge of exhaust water into environment waters, the steps that can be taken to minimize water-caused problems, the importance of diligence and control in the execution of cooling water treatment programs.

(7) MISCELLANEOUS SUBCATEGORY

Applicator must demonstrate knowledge appropriate to their specific field of pest control.

(h) PUBLIC HEALTH PEST CONTROL CATEGORY

Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests are involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

(i) REGULATORY PEST CONTROL CATEGORY

Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use of pesticides used in suppression and eradication programs.

They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are

frequently required in other areas where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

(j) DEMONSTRATION AND RESEARCH PEST CONTROL CATEGORY

Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticides uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide - organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in section 8.02 above. In addition, they shall meet the specific standards required for categories (1) through (7) of this section as may be applicable to their particular activity.

Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards detailed in 8.02 above. In addition, they shall be expected to know the specific standards required for paragraph 8.03 (1) through (9) of this section, applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

8.04 CERTIFICATION FEES AND RENEWAL

(a) CERTIFICATION FEES

(1) Commercial applicators shall pay an annual certification fee of \$20.00. All certifications shall continue in full force until December 31st of each year whereupon they shall become invalid unless renewed, except that a certification for which a renewal application has been submitted to the Department by November 30th, shall remain in full force and effect until such time as the Department gives notice to the applicant of renewal or denial. Applications for renewal shall be mailed to all certified applicators by the Department before October 1st of each year.

(2) Federal, State or Local government employees who are certified under this law are exempt from this fee. This exemption shall remain valid only when applying or supervising the application of pesticides for such governmental agencies.

(b) CERTIFICATION RENEWAL

(1) Commercial Applicators

(i) Commercial applicators shall be required to be reexamined through a written test prior to their annual certification renewal.

(ii) The reexamination requirement may be

satisfied without taking a test, if the commercial applicator provides the Department with evidence that he has completed a specified minimum number of hours attending approved education courses, seminars or programs during the three calendar years preceding certification renewal. The specified number of hours for each category are listed in paragraph 8.04 (b)(1)(iv) below. This exemption from reexamination does not apply to a person holding a lapsed certificate, as described in paragraph 8.04 (b)(3) below.

(iii) A commercial applicator shall be exempt from the reexamination requirement for the first two certification renewals following his original certification in Delaware.

(iv) The number of hours of training required to fulfill paragraph 8.04 (b)(1)(ii) are specified as follows:

<u>Category of Pest Control</u>	<u>Hours</u>
Agricultural Plant (1A)	8
Agricultural Animal (1B)	4
Fumigation of Soils and Agricultural Commodities (1C)	4
Forest (02)	4
Ornamental & Turf (03)	8
Seed Treatment (04)	2
Aquatic (5A)	4
Antifouling Paint (5B)	2
Mosquito (5C)	4
Right-of-Way (06)	4
Industrial, Institutional, Structural & Health Related (07)	
General Pest Control (7A)	18
Wood Destroying Pest Control (7B)	18
Fumigation Pest Control (non-agricultural) (7C)	4
Wood Preservatives (7D)	4
Institutional and Maintenance (7E)	18
Cooling Towers (7F)	4
Miscellaneous (7G)	4
Public Health (08)	4
Regulatory (09)	4
Demonstration & Research (10)	8

(2) Private Applicators

(i) A private applicator's certification shall continue in full force until December 31st of the third year following his original certification.

(ii) A private applicator shall be required to be reexamined prior to certification renewal.

(iii) The reexamination requirement may be satisfied without taking a test, if the applicator provides the Department with evidence that he has attended a minimum of three (3) hours of approved education courses, seminars or programs during the three (3) calendar years preceding certification renewal.

(3) Expiration

(i) A certificate shall have a ninety (90) day grace period after the date of expiration. When the grace period expires, the certificate shall be considered to have lapsed.

(ii) A person holding a lapsed certificate must be examined as described by paragraph 8.01, in order to receive a new certificate.

(iii) An applicator is not imparted the right to purchase, use or supervise the use of a restricted use pesticide during the ninety (90) day grace period following the expiration date on his certificate.

8.05 EXEMPTIONS

The above standards do not apply to the following persons for the purposes of these regulations:

(a) Persons conducting laboratory type research involving restricted use pesticides; and

(b) Doctors of Medicine, Doctors of Osteopathy, and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice.

(c) Owners and employees of any child day-care center which is operated within a private home.

SECTION 9 STANDARDS FOR CERTIFICATION OF PRIVATE APPLICATORS

9.01 As a minimum requirement for certification, a private applicator must show that he possesses a practical knowledge of the pest problem and pest control practices associated with his agricultural operations and his related legal responsibility. This practical knowledge includes ability to:

(a) Recognize common pests to be controlled and damage caused by them.

(b) Read and understand the label and labeling information - including the common name of pesticides he applies; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and specific disposal procedures.

(c) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

(d) Recognize local environmental situations that must be considered during application to avoid contamination.

(e) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

9.02 Such competence of each private applicator shall be verified through the administration of a private applicator

certification system here described which ensures that the private applicator is competent, based upon the standards set forth above, to use the restricted use pesticides under limitations of applicable State and Federal laws and regulations. One or more of the following options will be employed to certify private applicators:

(a) GENERAL CERTIFICATION

This option certifies the private applicator as competent to apply any restricted use pesticide which he would normally expect to use in his particular agricultural operations. Competency determination shall reflect all aspects of the private applicator standards and shall be broad enough to test the private applicator's ability to apply general principles to specific problems associated with the restricted use pesticides required for the production and protection of his crops.

(b) PESTICIDE CLASS CERTIFICATION

This option certifies the private applicator as competent to apply any restricted use pesticide products and all different formulations of a pesticide used for the same purpose, use, or application. Examples include, but are not limited to, preemergence herbicides for vegetable crops, foliar insecticides on corn, rodenticides in fruit orchards, nematicides in fields prior to planting, ground application of fungicides on vegetables, seed treatments for plant diseases, and livestock dips for insect control.

Competency determination shall reflect the full range of the private applicator standards, but with special emphasis placed on the particular characteristics of the pesticide class, as well as the nature of the application or use.

(c) COMMODITY/CROP/SITE CERTIFICATION

This option certifies the private applicator as competent to apply any restricted use pesticide needed for specific crops or sites which the applicator would be expected to deal with in his agricultural operations. This would include any pesticide products (different pesticide classes, active ingredients, and formulations) used on a specific line or class designation. Examples include: single crop such as corn, apples, or wheat; single site class such as poultry houses or dairy barns; single livestock line, such as beef cattle, swine, or turkeys; crop classes such as forage crops or small fruits, site class such as barns or greenhouses; and livestock class such as poultry.

Competency determination shall reflect the full range of the private applicator standards, with emphasis placed on the particular characteristics of the specific crop or site, or crop/site class concerned and the pests involved.

A private applicator may wish to be certified for a specific crop or site (such as corn or beef cattle) or for a crop or site class (such as forage crops, livestock, small grain crops).

(d) SINGLE PRODUCT CERTIFICATION

This option certifies as competent the private

applicator for one or more uses of a single product or related products with the same active ingredient and with a similar formulation and uses. Competency determination shall reflect all appropriate uses of these products for the agricultural area where he will be expected to make pesticide application.

(e) SINGLE PRODUCTS/SINGLE USE AUTHORIZATION (EMERGENCY PROGRAM)

This option would authorize the private applicator to make single use application(s) of a restricted use product (or other products of the same formulation). This option will be used only as an emergency provision to accommodate situations such as an unexpected pest problem that requires immediate certification of a previously uncertified private applicator or one whose particular type of certification would not cover the product needed to deal with the problem.

9.03 DETERMINATION OF COMPETENCY FOR PRIVATE APPLICATORS

(a) Competence in the use and handling of pesticides by private applicators shall be determined by written examinations with questions based upon study materials made available by the Department. Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

(b) Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. The applicant may apply for reexamination, which shall be scheduled by the Department at least 30 days after the applicant's initial examination.

(c) Upon showing of hardship, an applicant for private applicator certification may appeal to the Secretary for an exception to paragraphs 9.03 (a) and (b). At his discretion, the Secretary may provide for an alternative means of examination, to include but not be limited to oral examination. Oral examinations shall cover the same material included in the written examination.

SECTION 10 STANDARDS FOR SUPERVISION OF NON-CERTIFIED APPLICATORS BY CERTIFIED PRIVATE AND COMMERCIAL APPLICATORS

10.01 Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

10.02 The availability of the certified applicator must be directly related to the hazard of the situation, the complexity of the application or the ability to readily communicate with the non-certified applicator. In many situations, where the certified applicator is not required to be physically present,

"direct supervision" shall include verifiable instructions to the competent person, as follows:

(a) Detailed guidance for applying the pesticide properly, and

(b) Provisions for contacting the certified applicator in the event he is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

SECTION 11 FEDERAL AGENCY PESTICIDE APPLICATORS

11.01 When an employee of any agency of the United States Government has been qualified in any category as competent to apply restricted use pesticides under the Government Agency Plan (GAP) or under other plans judged by the Secretary to be at least equal to the Delaware Plan, such employee will be certified by the Secretary in the same category without the need for a written examination nor for the payment of any fee.

11.02 Federal employees qualified under an acceptable Federal Plan to apply restricted use pesticides and who intend to apply restricted use pesticides in Delaware as a part of their agency work shall present their qualifying documents to the Secretary and, if acceptable, these documents will be endorsed or a state document will be issued which will permit the federal employee to use restricted use pesticides in Delaware.

11.03 If, in an emergency situation, federal employees are brought into Delaware to control or eradicate pests and when these employees have been properly qualified to use restricted use pesticides under the plan of another state or under an acceptable federal government agency plan, such employee shall be considered to be certified in Delaware and he or his agency must, within 10 days, present qualifying credentials to the Secretary. At this time state credentials will be issued if the employee is to remain in Delaware as an applicator of restricted use pesticides.

11.04 The provisions of this section do not apply to non-federal employees contracted to perform pesticide application for the federal government. In an emergency, however, and with the concurrence of the Secretary, a non-certified person may apply pesticides under the direct supervision of a properly certified federal applicator. Within 10 days such person working within the state boundaries must apply for Delaware certification in the normal manner.

SECTION 12 RECIPROCITY

12.01 When a commercial applicator is certified under the

state plan of another state and desires to operate as a commercial applicator in Delaware he shall make application to the Secretary and shall include, along with the proper fee and other details required by the LAW, a true copy of his credentials certifying him as an applicator of restricted use pesticides in another state. The Secretary then may, if he approves the credentials, issue a Delaware certification to the applicator in the appropriate classification and/or category(ies) for which he is certified in another state without a written examination. The original certification must be made in the state where the commercial applicator resides or where he has his principle place of business.

SECTION 13 REVOCATION

13.01 The Department, after due notice and opportunity for a hearing, may deny, suspend, revoke or modify any application for or provision of any certification, including reciprocal certification, under the LAW if the Department finds that the Certified Applicator or the applicant for Certification has committed any act or acts declared by the Law or these regulations to be unlawful.

SECTION 14 RECORDS

14.01 COMMERCIAL APPLICATORS

Commercial applicators shall, for a period of two years from the date of application, keep records detailing the application of any pesticides to include:

(a) The brand name of the pesticide used. In the case of a Restricted Use Pesticide or a pesticide which is used under the provisions of 40 **Code of Federal Regulations**, Part 170, Worker Protection Standards, the EPA Registration Number shall also be recorded at or before the time of application.

(b) When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs./acre, etc.)

(c) The date and specific area treated.

(d) The pest against which the pesticide was used.

(e) The applicator's name, and when applicable, the name of the certified applicator responsible for his supervision.

(f) When label directions advise precaution in regard to drift, on-site weather conditions to include:

(i) Wind velocity and direction

(ii) Temperature

(iii) Relative humidity

(g) In addition to the above record keeping requirements, the applicator shall have available at the site of application, a copy of the label of the pesticide being used. Upon request, the applicator shall provide any interested person at or adjacent to the application site, with any information contained on the pesticide label.

14.02 RESTRICTED USE PESTICIDES DEALERS

Restricted use pesticide dealers shall keep and maintain for a period of two years, records on the sale or other disposition of restricted use pesticides to include the following:

(a) The name and address of the residence or principal place of business of the certified applicator to whom the pesticide is made available for use.

(b) The certification identification number of the purchaser or receiver of the pesticide on the document.

(c) The product name and E.P.A. registration number on the label of the pesticide.

(d) The quantity of the pesticide made available for use in the transaction.

(e) Date of the sale or transaction.

SECTION 15 FINANCIAL SECURITY REQUIRED OF LICENSEE

15.01 The Secretary shall not issue a license until the applicant has filed evidence of financial security with the Secretary. Such evidence shall consist of a general liability insurance policy with completed operation coverage or certification thereof from an insurance company, person, or risk retention group formed under the Federal Risk Act of 1986, authorized to do business in Delaware.

(a) AGRICULTURE

(1) PLANT PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(2) AGRICULTURE ANIMAL PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(b) FOREST PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(c) ORNAMENTAL AND TURF PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred

Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(d) SEED TREATMENT

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(e) AQUATIC PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(f) RIGHT-OF-WAY PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

(g) INDUSTRIAL, INSTITUTIONAL, STRUCTURAL AND HEALTH RELATED PEST CONTROL

An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.02 AERIAL APPLICATORS

Aerial applicators applying for a license in any of the above categories or subcategories shall show evidence of financial security in the minimum of One Hundred Thousand Dollars (\$100,000) for each individual damage and Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.03 Nothing to these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the Secretary.

SECTION 16 STORING AND DISPOSAL OF PESTICIDES AND PESTICIDE CONTAINERS

16.01 PROHIBITED ACTS

No person shall dispose of or store (or receive for disposal or storage) any pesticide, pesticide container or pesticide

container residue:

(a) In a manner inconsistent with its label or labeling;

(b) So as to cause or allow the open dumping of pesticides or pesticide containers;

(c) So as to cause or allow open burning of pesticide or pesticide containers, except; the open burning by the user of small quantities of combustible containers (but not to exceed 50 lbs.) containing pesticides other than those containing organic mercury, chlorates, lead, cadmium, or arsenic compounds, is acceptable when allowed by state or local regulations and when due regard is given to wind direction in relation to the protection of crops, animals and people from the pesticide vapors created through burning;

(d) So as to cause or allow dumping of pesticides in any stream, river, pond, sewer or lake, except in conformance with permits issued by the Delaware Department of Agriculture or other state agency having jurisdiction regarding water pollution;

(e) So as to violate any applicable state or federal pollution control standard.

16.02 PESTICIDE AND PESTICIDE CONTAINER DISPOSAL

Pesticide containers shall, upon completion of use, be triple rinsed immediately by the applicator or someone under his direct supervision or cleaned by another method or procedure equivalent in residue removal effectiveness.

(a) The standard triple rinse procedure is as follows:

(1) The emptied container shall be drained for at least thirty (30) seconds after steady flow of pesticide formulation has ceased and after individual drops are evident. Any pesticide formulation drained shall be added to the spray tank mix and shall be applied in accordance with label instructions.

(2) A solvent, usually water, specified by the manufacturer and capable of removing the pesticide residue shall be added to the drained container in an amount equal to ten percent (10%) of its capacity. The container then shall be shaken, agitated, or rolled vigorously in such fashion as to dislodge residues from the top, bottom and sides. The liquid residues (rinsate) shall be added as make-up to the spray tank mix, and the container shall be allowed to drain for at least thirty (30) seconds after steady flow has ceased and after individual drops are evident.

(3) The above procedure shall be performed two more times, each time allowing the container to drain at least thirty (30) seconds and adding all rinsate to the spray tank mix to be applied in accordance with label instructions.

(b) In cases where undiluted formulations are used and rinsate cannot be added to the spray tank, the residue must be disposed of in accordance with applicable Department of Natural Resources and Environmental Control (DNREC) regulations.

(c) Methods of rinsing or cleaning containers, other

than the standard triple rinsing procedure described above, may be used provided they are shown to remove equivalent amounts of pesticide residues which can be disposed of in an environmentally safe manner.

(d) In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the liner shall be considered the equivalent of triple rinsing. The removed liners must be disposed of in a sanitary landfill or by incineration if allowed by State and local authorities. Liners removed from pesticide containers containing pesticides listed as hazardous waste are also considered hazardous waste unless the liners are triple rinsed with an applicable solvent or other method approved as equivalent, prior to their removal from the container. These liners must be handled and disposed of in accordance with applicable DNREC regulations.

(e) Following the rinsing, cleaning or liner removal procedure, plastic or metal containers not destined for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to insure they are empty and to prevent re-use. Glass containers are exempt from this puncture requirement. Plastic containers may be burned if allowed by State and local authorities.

(f) Pesticide containers labeled for commercial or farm use, which have been triple rinsed and handled in accordance with 16.02 (a) through 16.02 (e), shall be disposed of at a Solid Waste Facility.

(g) Unused or unwanted farm or commercial use pesticides which qualify as hazardous waste shall be disposed of in accordance with 7 DEL C., Chapter 63 and the Delaware Regulations Governing Hazardous Waste.

(h) Pesticides and/or pesticide containers which are not subject to these regulations are as follows:

(1) Paper, cardboard and fiberboard containers. Storage, handling and disposal must, however, be in accordance with label directions and any applicable DNREC regulations and/or local ordinances. This waiver applies only if all the pesticide contents have been removed from the container using practical methods.

(2) Aerosol containers and compressed gas cylinders, provided that aerosol containers are disposed of according to the product labeling and the empty compressed gas cylinders are returned for re-use.

(3) Pesticide containers labeled as returnable, and which are returned to the manufacturer for refill.

(4) Pesticides and pesticide containers which are intended solely for home and garden use, provided they are securely wrapped in several layers of paper and disposed of singly during routine municipal solid waste disposal.

16.03 PESTICIDE STORAGE

(a) Pesticides shall be stored in such a manner so as to prevent the contamination of food, feed and/or water.

(b) Pesticides shall be stored out of the reach of

children and so as not to present a public nuisance.

(c) Until such time as the Secretary shall, along with the Pesticide Advisory Committee and any other person as the Secretary may consult, promulgate more specific rules and regulations covering the storage of pesticides and pesticide containers not provided in 16.01 and 16.03 of this Section, the recommended procedures for the storage of pesticides and containers detailed in Regulations promulgated by the Administrator, United States Environmental Protection Agency shall be the recommended procedures for Delaware. The Secretary shall make copies of these procedures available to any person needing guidance for proper storage of pesticides or pesticide containers.

SECTION 17 PESTICIDE ADVISORY COMMITTEE

17.01 EXPENSES OF MEMBERS NOT FROM GOVERNMENT DEPARTMENTS

Pesticide Advisory Committee members not from governmental departments shall submit expense accounts to the Secretary. Reimbursements made to members not from governmental departments shall be made for the actual cost of lodging and meals (out of state) and for transportation according to the regulations applicable to Department employees.

SECTION 18 APPLICATION AND EQUIPMENT

18.01 No person shall apply, dispense or use any pesticide in or through any equipment or application apparatus unless such equipment or application apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material; all pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall not leak pesticide; all spray distribution systems shall not leak pesticides and any pumps which such systems may have shall not leak pesticides and any pumps which such systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge; and all pesticide application equipment shall be equipped with whatever cut-off valves and discharge orifices may be necessary to enable the operator to pass over non-target areas without contaminating them.

18.02 All hoses, pumps or other equipment used to fill pesticide handling, storage or application equipment shall be fitted with an effective valve or device to prevent backflow of pesticides or pesticide use-dilutions into water supply systems, streams, lakes, other sources of water or other materials. Provided, however, such backflow devices or valves are not required for separate water storage tanks used

to fill agricultural pesticide application equipment by gravity systems when the fill spout, tube or pipe is not allowed to contact or fall below the water level of the application equipment being filled and no other possible means of establishing a backsiphon or backflow exists.

SECTION 19 ANTIFOULING PAINT RESTRICTIONS

19.01 For the purposes of this section, the following definitions shall apply:

(a) The term "acceptable release rate" means a measured release rate not to exceed 4.0 micrograms per square centimeter per day and as further defined in the Organotin Anti-fouling Paint Control Act of 1988, (Pub. L. - 100-333).

(b) The term "antifouling paint" means a coating, paint, or treatment that is applied to a vessel or any fishing gear used to catch shellfish or finfish to control fresh water or marine fouling organisms.

(c) The term "vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

(d) The term "commercial boat yard" means any facility which engages for hire in the construction, storage, maintenance, repair, or refurbishing of vessels or any licensed independent marine maintenance contractor who engages in such activities.

(e) The term "organotin" means any compound of tin used as a biocide in an anti-fouling paint.

(f) The term "retail" means the transfer of title to tangible personal property other than for resale, after manufacturing or processing.

19.02 Except as otherwise provided in this Section, no person shall distribute, possess, sell, or offer for sale, apply or offer for use or application any marine anti-fouling paint containing organotin.

19.03 No person may sell or deliver to, or purchase or receive from, another person at retail any substance containing organotin for the purpose of adding such substances to paint to create an anti-fouling paint.

19.04 A person may distribute or sell a marine anti-fouling paint containing organotin with an acceptable release rate to the owner or agent of a commercial boat yard. The owner or agent of a commercial boat yard may possess and apply or purchase for application an anti-fouling paint containing organotin with an acceptable release rate, however, such paint may be applied only within a commercial boat yard and only to vessels which exceed twenty-five meters (82.02 feet) in length or which have aluminum hulls.

19.05 A person may distribute, sell, or apply a marine anti-fouling paint containing organotin having an acceptable release rate, if the paint is distributed or sold in a spray can in a quantity of sixteen ounces avoirdupois or less and is commonly referred to as outboard or lower unit paint.

SECTION 20 RESTRICTED USE PESTICIDE DEALER PERMITS

20.01 For the purposes of these regulations the following definitions shall apply:

(a) The term "restricted use pesticide dealer" means any person who makes available for use any restricted use pesticide, or who offers to make available for use any such pesticide. The term excludes any person who sells or distributes pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used during a pesticide application.

(b) The term "make available for use" means to distribute, sell, ship, deliver for shipment, or receive, and (having so received) deliver, for use by any person. However, the term excludes transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail dealers, acting only in those capacities.

(c) The term "dealership" means any site owned or operated by a restricted use pesticide dealer where any restricted use pesticide is made available for use, or where the dealer offers to make available for use any such pesticide.

20.02 Effective December 31, 1990, no person shall make available for use any restricted use pesticide unless that person has a valid Dealer Permit issued by the Department.

20.03 A separate Dealer Permit shall be required for each dealership owned or operated by the restricted use pesticide dealer.

20.04 Issuance of a Dealer Permit:

(a) Application for a Dealer Permit shall be made in writing to the Department on a designated form obtained from the Department.

(b) The Department shall issue a Dealer Permit to an applicant upon payment of a fee of \$25.00 for a calendar year or any part of a calendar year.

(c) All permits shall remain in full force and effect until December 31st of each year whereupon they shall become invalid unless renewed, except that a permit for which a renewal application has been submitted to the Department by November 30th shall remain in full force and effect until such time as the Department gives written notice to the permit holder of renewal or denial.

20.05 A restricted use pesticide dealer is responsible for the acts of his employees in the solicitation and sale of all pesticides and all claims and recommendations for the use of pesticides.

20.06 A dealer permit is not transferable.

20.07 The Department, in addition to any penalties authorized by the LAW, may deny, suspend, or revoke the application or permit of a restricted use pesticide dealer if he has failed to comply with any provisions of the LAW or any rules and regulations promulgated thereunder.

SECTION 21 INSTITUTIONAL AND MAINTENANCE PESTICIDE USE RESTRICTIONS

21.01 For the purposes of these regulations, the following definitions shall apply:

(a) The term "general use pesticide" shall include all pesticides as defined by 3 **Del.C.**, **DELAWARE PESTICIDE LAW**, §1202 (27), with the following exceptions:

(1) Any Restricted Use Pesticides, as defined by 3 **Del.C.** §1202 (30);

(2) Any State Restricted Use Pesticide, as defined by 3 **Del.C.**, §1202 (31);

(3) Any anti-microbial pesticide used for controlling bacteria, viruses, or other microorganisms.

(b) The term "school" shall mean a completed structure utilized as a public or private school, grades kindergarten through post graduate.

(c) The term "apartment building" shall mean a building that contains four or more dwelling units that are rented primarily for nontransient, permanent dwelling purposes, with rental paid by intervals of one week or longer.

(d) The term "nursing home" shall have the same meaning assigned by 16 **Del.C.**, Chapter 11, §1101.

(e) The term "hospital" shall have the same meaning assigned by 16 **Del.C.**, Chapter 10, §1001 (1).

(f) The term "child day-care center" shall mean a facility, other than a school as defined elsewhere herein, which provides care, education, protection, supervision and guidance on a regular basis for children. Services are provided for part of the 24 hour day, unattended by parent or guardian, and for compensation. Provided, nevertheless, that "child day-care center" shall not include any such facility which is operated within a private home.

(g) The term "private home" shall mean a non-public residence such as a house, duplex, townhouse, apartment, or mobile home where the provider of child day-care services lives and has control over the furnishings and use of space. An individual unit in public housing and university housing complexes is considered a private home.

(h) The term "Institutional and Maintenance

applicator" means any person who:

(1) Owns, operates or maintains a school, apartment building, nursing home, hospital or child day-care center, or is an employee of a school, apartment building, nursing home, hospital, or child day-care center; and who

(2) Applies general use pesticides inside the school, apartment building, nursing home, hospital, or child day-care center.

21.02 A general use pesticide applicator must be certified pursuant to Section 8 of these regulations, unless, such person possesses a valid certification in subcategory 7.07 (e), Institutional and Maintenance Pest Control.

21.03 A person certified as a general maintenance applicator may not engage in the business of pest control outside the scope of the employment for which they have been certified, unless the person becomes certified as otherwise provided by the LAW.

21.04 An owner or manager of a building that is a school, apartment building, nursing home, hospital, or child day-care center may obtain general maintenance pest control services for the building from a person only by:

(a) Contracting with a business licensed pursuant to 3 **Del.C.**, Chapter 12, §1206;

(b) Having the services performed by a general maintenance applicator with a valid certification in Section 7.07(a) or 7.07(e) of these regulations.

21.05 Records of "general use pesticide" applications made in a school, apartment building, nursing home, hospital, or child day-care center shall be kept in accordance with Section 14.01.

SECTION 22 RESTRICTIONS ON THE USE OF PESTICIDES FOR THE CONTROL OF SUBTERRANEAN TERMITES

22.01 This section applies to commercial pesticide applications for the control of subterranean termites. It is directed primarily towards soil treatment and does not include other treatments applied as dusts, aerosols or fumigants, ~~n~~ Nor does it address application technology such as biological control agents or baits.

22.02 For the purpose of this section, the following definition shall apply:

(a) "Termiticide" shall mean a pesticide registered pursuant to the LAW and which is intended for preventing, destroying, repelling or mitigating termites.

(b) "Continuous chemical barrier" shall mean the application of a termiticide such that the resultant soil residue meets or exceeds the soil residue requirements

currently recommended by the Association of Structural Pest Control Regulatory Officials (ASPCRO) and as those requirements may be amended in the future. Soil residue sampling shall be conducted in conformity with the current ASPCRO soil sampling protocol and as it may be amended in the future.

22.03 Termiticides shall be used to establish a continuous chemical barrier in all applicable areas prescribed by the label. However, where the termiticide is applied such that a continuous barrier is not achieved, or where the termiticide is not applied to all applicable areas prescribed by the termiticide label, the conditions outlined in both (a) and (b) below must be satisfied:

(a) One or more of the following situations is present:

(1) Specific environmental conditions are such that application of the termiticide at the full labeled concentration and volume may result in adverse environmental impact. Examples may include the presence of a well, a footing drain that empties into a water body, a high water table, etc.;

(2) Structural barriers or soil conditions or types exist that prohibit application of the labeled volume or limit access to applicable soil treatment areas;

(3) ~~Construction elements are present that would or could encourage a reduced volume, e.g., poured walls vs. hollow block walls;~~

Specific customer request, or ~~at~~ the recommendation of the certified applicator.

(b) Within fourteen (14) days following the termiticide application, the following information ~~shall be~~ is furnished in writing to the customer or ~~to the appropriate person~~ customer's agent:

(1) A full disclosure explaining the difference between full and partial applications. The disclosure shall include the termite control strategies being utilized and the reasons for those alternatives;

(2) The pesticide used, including brand name and EPA registration number;

(3) The actual volume of the termiticide applied;

(4) Specific information of sufficient detail to distinguish where treatment actually occurred, including a diagram of the structure identifying treated areas, ~~well~~ locations known well heads, and sites of visible termite activity;

(5) A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty, e.g., retreatment (full or partial), damage repair and retreatment, or no warranty.

This information shall be furnished to the customer or customer's agent on a form approved by the Department. The applicator shall for a period of two years from the date of application, keep and maintain all completed copies of disclosure documents. Such records shall be made available to authorized employees of the

Department upon request.

22.04 Any application of termiticides, pursuant to this section, must be conducted with a commercial applicator at the site of application. This commercial applicator must be certified in category 7.07(b), Wood Destroying Pest Control.

22.05 The disclosure information and written notification specified in paragraph 22.03(b) are not required of termiticide treatments to utility poles, fence posts or tree stumps.

22.06 Any pre-construction termiticide application shall be applied in accordance with the termiticide product labeling and the U.S. Environmental Protection Agency, Pesticide Regulations (PR) Notice 96-7. For pre-construction treatments, PR Notice 96-7 supercedes this Section, and no pre-construction treatment shall be applied at a lower dosage and/or concentration than specified on the label, for applications prior to installation of the finished grade.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. 122(d))

**Before the Department of Education
Of the State of Delaware**

Regulatory Implementing Order

Children with Disabilities

**I. Summary Of The Evidence And
Information Submitted**

At its April 20, 2000 meeting, the State Board of Education consented to the Acting Secretary of Education's adoption of regulations on Children with Disabilities. As suggested in the Board's April 20, 2000 "Implementing Order", the Acting Secretary now seeks the Board's consent to further amend these regulations. As with the changes approved in April, the primary purpose of the proposed amendments is to assure compliance with the 1997 amendments to the *Individuals with Disabilities Education Act* ("IDEA") and its federal implementing regulations.

The currently proposed revisions address Interagency and Special Programs, Funding, Other State Agency Responsibilities and Children in Private Schools/Unique Educational Alternatives. If adopted, the proposed regulations will be incorporated in the Department's new

technical assistance document, the *Administrative Manual for Special Education Services* ("AMSES"), along with the regulations approved by the Board on April 20, 2000.

The Department solicited informal comments and input regarding the revisions to *AMPEC* in 1998 and 1999 from District Directors/Supervisors of Special Education and from the Governor's Advisory Council for Exceptional Citizens. Notice of the currently proposed amendments, including information on submitting formal comments, was published in the *News Journal* and the *Delaware State News* on March 13, 2000 in the form attached hereto as Exhibit A.

The proposed regulations also appeared in the *Delaware Register of Regulations* on March 1, 2000, at 3 *DE Reg.* 1151-1165 (March 1, 2000) and were distributed to the Chief School Officers, the Governor's Advisory Council for Exceptional Citizens, Delaware School Boards Association, Delaware State Education Association, and the Delaware Association of School Administrators in February, 2000. In addition, public hearings on the proposed regulations were held on March 7, 2000 and March 8, 2000 at two different locations in the State. Notice of these public hearings appeared in the *News Journal* and the *Delaware State News* on February 14, 2000 in the form attached hereto as Exhibit B.

Most of the comments received were directed to editing, style and clarity of wording. The Department agrees with these suggestions and has incorporated them into the proposed regulations as nonsubstantive changes. Other comments were considered, but did not result in changes. These items are summarized in Exhibit C, attached hereto.

II. Findings Of Fact

The Acting Secretary finds that it is necessary to further amend these regulations because of the 1997 federal reauthorization and revision of the *IDEA* and the 1999 federal adoption of the *IDEA* implementing regulations. The Department has also determined that the editing and changes made to the published proposal are not substantive and may be adopted without additional opportunity for public comment.

The Acting Secretary also finds that the proposed regulations (including the nonsubstantive changes made to them as a result of public comment) are consistent with the federal requirements and with Chapter 31 of Title 14 of the *Delaware Code*. The changes also help clarify the various statutory and regulatory requirements and impact for school districts and parents.

The Acting Secretary *declines to adopt* the following sections of proposed regulations for the reasons stated.

- Section 20.0 "Special Programs for Children who are Deaf and Hard of Hearing." This proposed regulation would have continued the duties of the State Com-

mittee for the Deaf and Hard of Hearing. The Department received several comments that the regulation was inconsistent with the role of the IEP team as developed in the 1997 federal revisions and no longer served a useful purpose. The Department agrees that the Committee's function is no longer appropriate in light of the federal revisions and thus, declines to adopt this section.

- Section 22.2, "The Statewide Monitoring Review Board." As proposed, this regulation would have continued the composition and duties of this Board as previously constituted. The Department received many comments from parents of children with autism, the Autism Society of Delaware and others, suggesting substantial changes to the Board. The Acting Secretary has determined that this proposed regulation should be revised in light of these comments.

Finally, the Acting Secretary notes that in April, the Department declined to adopt several sections of proposed regulations as a result of public comments it received. In addition, the Department has concluded that Section 22.2 of the current proposed revisions requires substantive change, as discussed above. These sections are being revised and will be republished for additional public comment. The Department anticipates that all of the proposed sections requiring substantive changes, whether from the first or second group of proposed regulations, will be republished and presented to the Board during the summer of 2000.

III. Decision To Amend The Current Regulations

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend its regulations on Children with Disabilities. Therefore, pursuant to Chapter 31 of Title 14 of the *Delaware Code*, the regulations attached hereto as Exhibit D are adopted. Pursuant to the provisions of 14 *Del.C.* §122(e), the amended regulations shall be in effect for a period of not more than five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the adopted regulations shall be in the form attached hereto as Exhibit D and shall become part of the *Regulations of the Department of Education*.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del.C.* Chapter 31, in open session at the State Board's regularly scheduled meeting on May 18, 2000. The effective date of this Order shall be ten

(10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 18th day of May, 2000.

DEPARTMENT OF EDUCATION

Valerie A Woodruff
Acting Secretary of Education

Approved this 18th day of May, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

Summary Of Other Public Comments

The Department received comments in the following areas, but has declined to revise the proposed regulation for the reasons noted.

- Sections 22.7.9.1.1 and 22.7.9.1.2: The Autism Society of Delaware suggested enlarging the proposed deadline for submitting procedural descriptions of behavior management procedures to the Human Rights and Peer Review Committees. The proposed time frames are the same as the current ones and have caused no past complaint or problem.
- Section 23.4: The Governor's Advisory Council for Exceptional Citizens (GACEC) proposed establishing timelines and more detailed notification procedures for ICT reviews and the use of email, fax and hand delivery of documents to expedite processing. The proposed procedure is the one currently used with few complaints or problems.
- The GACEC suggested additional regulations concerning responsibility for the education and monitoring of education when a student is placed by an agency other than the Department. The Department believes that this issue is better addressed through interagency agreements and is currently developing such an agreement with the Department of Services to Children, Youth and their Families.
- The federal regulations require the Department to review and revise its policies if it identifies discrepancies in suspension and expulsion rates among special education students. The GACEC requested that the

Department articulate in regulations how it will address any identified discrepancies. The Department believes that policy changes required by any identified discrepancies should occur in consultation with the Partner's Council for Children with Disabilities rather than via regulation.

- The GACEC requested that the Department establish timetables for activities related to federal monitoring. The Comprehensive Compliance Monitoring System (CCMS) is currently under major modification and will result in a new Monitor's handbook which will address activities and timetables without the need for regulations.
- The Disabilities Law Program recommended that the ICT be responsible for parental notification of ICT review. The Department believes that this duty should remain with the district because the IEP team makes the decision to present applications for funding to the ICT.
- The GACEC requested that a regulation be added to clarify that the IEP team, not the ICT, has the authority to determine a student's educational placement. The Department believes that the respective duties of the IEP team and the ICT are already clearly distinguished in proposed Section 23.1 (role of the ICT is to provide support for student placement) and Section 23.7 (districts and agencies may make placements independent of the ICT).
- The GACEC suggested that proposed Section 25.2 include: (1) a definition of "special school"; (2) a requirement that aides not be authorized to substitute for teachers; and (3) a requirement that each class have a minimum of one teacher. The proposed section is the same as the current regulation and the Department declines at this time to adopt these additional regulations.
- The Disabilities Law Program requested regulations regarding the licensing and supervision of residential group homes operated by the Delaware Autistic Program. The Department has begun discussions with the Department of Health and Social Services and the Department of Services for Children, Youth and Their Families around this issue and will propose additional regulations in this area as necessary.

Exhibit C To Regulatory Implementing Order Of May 18, 2000 proposed Regulations On Children With Disabilities(As Published In March 1, 2000 Register Of Regulations)

**AS AMENDED
Children With Disabilities**

- 1.0 Adoption and Incorporation of Federal Regulations
 - 1.1 The federal regulations adopted pursuant to the

Individuals with Disabilities Act Amendments of 1997, effective May 11, 1999 and located at 34 *CFR* Parts 300 and 303, are adopted and incorporated as part of these Regulations.

1.2 These Regulations implement, complement and supplement the federal regulations and Chapter 31 of Title 14 of the *Delaware Code* (with the exception of Subchapter IV) and are designed and intended to insure compliance with applicable state and federal law. To the extent these Regulations conflict with the federal regulations, the federal regulations shall prevail.

1.3 These Regulations are arranged to correspond to the order of the federal regulations and shall be read in conjunction with the parallel provisions of the federal regulations, as illustrated by the *Administrative Manual for Special Education Services* (adopted February 2000), available at the Department of Education.

2.0 Identification of Children with Disabilities

2.1 Child Find: Each school district and any other public agency responsible for the education of children with disabilities shall identify, locate and evaluate or reevaluate all children with disabilities residing within the confines of that district or other public agency, including children in private schools.

2.2 Health Screening: Health, hearing, vision, and orthopedic screening shall be conducted as specified in *The Regulations of the Department of Education*, 800.2, 800.3, 800.4, and 800.5.

2.3 Referral to Instructional Support Team: Referral to the school's instructional support team is a process whereby teachers enlist the help of the team to assist in the identification of potential instructional strategies or solutions for learning and behavior problems. The instructional support team process may or may not lead to referral for initial evaluation to determine eligibility and possible need for special education services. Documentation of the process should be comprehensive (including baseline and outcome data) and include strategies such as: curriculum based assessment, systematic observation, functional assessment, current health information and analyses of instructional variables.

2.3.1 Each district or other public agency shall adopt and implement procedures which provide for the referral of children to an instructional support team. All such referrals shall be specified in writing.

2.3.2 Referrals for an individual child which do not contain all required documentation shall be returned to the school based instructional support team with a request for the required information. Returns may be triggered if documentation does not indicate evidence as described in the instructional support team process. These provisions shall not be used by a school district to delay the provision of an individual student evaluation when all pre-referral data are complete and the referral agent maintains that the student is

in need of an individual student evaluation.

2.3.3 A parent may initiate a referral at any time for an initial evaluation to determine whether or not there is a need for special education services.

3.0 Procedures for Evaluation and Determination of Eligibility

3.1 Reserved - Initial Evaluation

3.2 Evaluation Procedures

3.2.1 Qualified Evaluation Specialists

3.2.1.1 A qualified evaluation specialist is a person who has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing student evaluation services.

3.2.2 Eligibility decisions may include (1) historical information and (2) evaluation data which are no more than two years old.

3.2.3 Each initial evaluation shall be completed in a manner which precludes undue delay in the evaluation of students.

3.2.4 The Evaluation Report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.

3.3 Procedures for Determining Eligibility and Placement

3.3.1 Children who have an articulation impairment as their only presenting disability may not need a complete battery of assessments. However, a qualified speech-language pathologist shall evaluate each child who has a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments.

3.3.2 Written Report: The Evaluation Report shall document the IEP team's discussion of the child's continued eligibility, including, where appropriate, the additional requirements for students with a learning disability.

3.3.3 Cognitive Ability: For cases in which continued eligibility for special education services is dependent upon level of cognitive ability or discrepancies between ability and achievement such as learning disability and mental disability, the IEP team shall ensure that the eligibility decision is based on reliable and valid individual assessment data. For children identified prior to age 7, a second individual evaluation shall occur after the child's 7th birthday, and be at least one year apart from the earlier evaluation. The results of these two evaluations shall lead to substantially similar conclusions about the child's level of cognitive ability or discrepancy between ability and achievement, if applicable.

3.3.4 Delaware Student Testing Program Participation: The IEP team shall determine the participation of a child with a disability in the Delaware

Student Testing Program in conformity with the guidelines set forth in the Delaware Student Testing Program, Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency.

4.0 Eligibility for Services

4.1 Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in accordance with Chapters 31 and 17 of Title 14 of the *Delaware Code* and other age ranges as provided for by State and/or federal legislation.

4.1.1 The age of eligibility for special education and related services for children identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive.

4.1.2 The age of eligibility for children identified as having preschool speech delay shall be from the third birthday up to, but not including, the fifth birthday.

4.1.3 The age of eligibility for children identified as having speech and/or language impairment shall be from the fifth birthday through twenty years, inclusive; provided, however, that children attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

4.1.4 The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.

4.1.5 The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that students in these categories attaining the minimum age by August 31 of the school year shall also be eligible.

4.1.6 The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.

4.1.7 Children in special education who attain age 21 after August 31 may continue their placement until the end of the school year including appropriate summer services through August 31.

4.2 Definitions and General Eligibility/Exit Criteria

4.2.1 Eligibility Criteria - General: A child shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 *Delaware Code*, Ch.

17, Section 1703, when such eligibility and the nature of the disabling condition are determined by an IEP team. Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.

4.2.2 Exit Criteria - General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider:

4.2.2.1 Eligibility criteria;

4.2.2.2 Data-based and/or documented measures of educational progress; and

4.2.2.3 Other relevant information

4.3 Eligibility Criteria for Autism: An IEP team shall review evidence for the following behavioral manifestations:

4.3.1 The presence of an impairment of verbal and nonverbal communication skills including the absence of speech or the presence of unusual speech features, and a combination of the following:

4.3.1.1 Impairment in reciprocal social orientation/interaction;

4.3.1.2 Extreme resistance to change and/or control;

4.3.1.3 Preoccupation with objects and/or inappropriate use of objects; and/or

4.3.1.4 Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior.

4.3.2 Identification of autism shall be documented through an evaluation by either a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by an IEP team and reviewed by the Monitoring Review Board.

4.3.3 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child, who exhibits a significant delay in one or more of the following developmental domains: cognitive,

communication (expressive and/or receptive), physical (gross motor and/or fine motor), social/emotional functioning, and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

4.4.1 In order for an IEP team to determine eligibility for special education services, under the Developmental Delay category, the following is required:

4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross and/or fine), social/emotional functioning or adaptive behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on the multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report.

4.4.2 Age of Eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the fourth birth date.

4.5 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf-blind condition:

4.5.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

4.5.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.5.3 Classification as a child who is deaf-blind shall be made by the IEP team after consideration of the above eligibility criteria.

4.5.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.6 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall

include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

4.6.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

4.6.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse.

4.6.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

4.6.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression and/or is unable to enter into age-appropriate relationships with peers, teachers and others; and

4.6.3 The age of eligibility for children identified under this definition shall be from the fourth birthday through 20 years, inclusive.

4.7 Eligibility Criteria for Hearing Impairment

4.7.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and

4.7.2 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.7.3 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

4.8 Reserved - Eligibility Criteria for Learning Disability

4.9 Mental Disability: The degree of mental disability is defined as follows: Educable Mental Disability (EMD) - I.Q. 50-70, +5 points; Trainable Mental Disability (TMD) - I.Q. 35-50, +5 points; Severe Mental Disability (SMD) - I.Q. below 35.

4.9.1 Eligibility Criteria for Mental Disability: The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in

determining that a child has a mental disability and the degree of mental disability.

4.9.2 The age of eligibility for children identified under the TMD, and SMD definition shall be from the third birthday through 20 years, inclusive. Children identified under the EMD definition shall be from the fourth birthday through 20 years inclusive. These children may be served at age 3 as having a developmental delay.

4.10 Eligibility Criteria for Physical Impairments: Eligibility criteria for physical impairments include examples of orthopedic disabilities, but are not limited to: traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogyposis, or contractures caused by fractures or burns. Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions, sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility.

4.10.1 A qualified physician shall document that a child has a physical impairment in order to be considered for special education and related services under the above definition.

4.10.2 The IEP team shall consider the child's need for special education and related services if the physical impairment substantially limits one or more major activities of daily living and the student has:

4.10.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or

4.10.2.3 Similar disabilities which result in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.

4.10.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.10.3.1 Medical records documenting the physical impairment are required, and current medical prescriptions such as O.T./P.T., medication, catheterization, tube feeding shall be included if available;

4.10.3.2 Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. the team shall include, but not necessarily be limited to, an educator and physical or occupational therapist;

4.10.3.3 Prior program or school records if available; and when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history, and/or psychological evaluation.

4.10.4 Age of Eligibility: The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.11 Speech and/or Language Impairment Eligibility Criteria: In determining eligibility under the Speech and/or Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; and/or a voice disorder.

4.11.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

4.12 Eligibility Criteria for Traumatic Brain Injury: A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

4.12.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

4.12.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.13 Visual Impairment Eligibility Criteria

4.13.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

4.13.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.

4.13.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

4.13.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.13.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.14 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only)

4.14.1 A speech disability is defined as a communication disorder/delay involving articulation, voice quality, and/or speech fluency to such a degree that it interferes with a child's overall communicative performance.

4.14.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

4.14.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized/norm-based instrument. It is strongly recommended that the evaluation include clinical observations and/or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

4.14.2.1.1 articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

4.14.2.1.2 conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

4.14.2.1.3 oral motor involvement which may affect the development of normal articulation.

4.14.2.1.4 speech fluency, or

4.14.2.1.5 voice quality

4.14.3 Results of the evaluation may indicate a significant delay in receptive and/or expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

4.14.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

5.0 Individualized Education Program (IEP): An IEP shall be developed prior to delivery of services and within thirty (30) calendar days following the determination that a child is eligible for special education and related services.

5.1 Transition Between Grades or Levels: During the annual review, the IEP team shall consider the needs of the child with a disability who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a child's transition between grades or levels does not endanger his/her receipt of a free appropriate public education.

5.2 IEP of Transferring Students with Disabilities

5.2.1 A child with a disability who transfers from one school district or other public agency educational program to another must be temporarily placed in an

educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency.

5.2.2 The request for, and the forwarding of, records shall be in accordance with 29 Delaware Code, Chapter 5.

5.2.3 A child's IEP from the sending school district or other public agency may be acceptable for temporary provision of special education services. The agreement shall be documented by the signatures of a parent and the receiving principal on a temporary placement form or the cover page of the IEP.

5.2.4 A review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency, and sixty (60) calendar days for students transferring from out-of-state schools. The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring children.

5.3 IEP Team: Participants at an IEP meeting shall be collectively identified as the IEP Team.

5.3.1 The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

5.3.2 The district shall notify parents of the IEP meeting no less than ten (10) business days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend, and no less than three (3) business days for removal due to disciplinary action. See 12.0 Disciplinary Procedures.

5.4 Content of the Individualized Education Program: Each child who is determined to be eligible for special education and related services shall have a single IEP.

5.4.1 The IEP shall designate whether it is necessary to place the child who is transported from school by bus into the charge of a parent or other authorized responsible person.

5.4.2 By the middle of the eighth grade, the IEP shall include plans to determine the child's interests/preferences, and to make application to high school and vocational education programs. Full transition services planning will apply by the end of the ninth grade or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team.

5.5 Monitoring IEPs: As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with state and federal requirements, the school district and/or other public agency shall review the IEPs of children with disabilities to determine that their

content is consistent with requirements of these regulations. Documentation of monitoring efforts shall be maintained by the school district and/or other public agencies.

5.6 Need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.

5.6.1 Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature and/or severity of the child's disability.

5.6.2 Regression/recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on students who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.

5.6.3 Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break.

5.6.4 Vocational: For children ages 16-20 whose IEPs contain vocational/employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.

5.6.5 Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.

5.6.6 Extended school year services are to be based on needs and goals/objectives found within the child's IEP of the school year, though activities may be different.

5.6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs provided by local school districts. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, per his/her IEP.

5.6.8 The decision of the setting for the delivery of extended school year services shall be an IEP

team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled students for the sole purpose of satisfying the LRE requirements for students receiving extended school year services.

5.6.9 Transportation shall be provided to students except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.

5.6.10 Written notice shall be provided to parents advising them that extended school year services will be discussed at the IEP meeting. The IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.

5.6.11 In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.

6.0 Least Restrictive Environment is operationalized in terms of the degree of interaction between children with and without disabilities. The decision about placement within the least restrictive environment is made following the writing of the IEP and is directly related to the child's needs and identified services documented in the IEP. Settings in which services can be provided include:

6.1 Regulation Education Class: Children with disabilities receive special education and related services outside the regular classroom for less than 21 percent of the school day. This may include children with disabilities placed in:

6.1.1 regular class with special education/related services provided within regular classes,

6.1.2 regular class with instruction within the regular class and with special education/related services provided outside regular classes, or

6.1.3 regular class with special education services provided in resource rooms.

6.2 Resource Class: Children with disabilities receiving special education and related services outside the regular classroom for at least 21 percent but no more than 60 percent of the school day. This may include children and youth placed in:

6.2.1 resource rooms with special education/related services provided within the resource room, or

6.2.2 resource rooms with part-time instruction in a regular class.

6.3 Self-Contained Class: Children with

disabilities receiving special education and related services outside the regular classroom for more than 60 percent of the school day. This does not include children who received education programs in public or private separate day or residential facilities. This may include children and youth placed in:

6.3.1 self-contained special classrooms with part-time instruction in a regular class.

6.3.2 self-contained special classrooms with full-time special education instruction on a regular school campus.

6.4 Public Separate Day School: Children with disabilities receive special education and related services for greater than 50 percent of the school day in public separate facilities. This may include children and youth placed in:

6.4.1 public day schools for children with disabilities, or

6.4.2 public day schools for children with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day.

6.5 Private Separate Day School: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private separate facilities. This may include children and youth placed in private day schools for students with disabilities.

6.6 Public Residential Placement: Children with disabilities receiving special education and related services for greater than 50 percent of the school day in public residential facilities. This may include children and youth placed in

6.6.1 public residential schools for children with disabilities, or

6.6.2 public residential schools for children with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.7 Private Residential Facilities: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private residential facilities. This may include children and youth placed in:

6.7.1 private residential schools for children with disabilities, or

6.7.2 private residential schools for students with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.8 Homebound/Hospital Placement: Supportive Instruction (Homebound Instruction) is supportive instruction in an alternative program provided at home, hospital or related site for children suffering from an illness or injury. For other disabled children it may be the level of

service which assures a free, appropriate public education.

6.8.1 In extraordinary instances where the child with a disability is a danger to himself or to herself, or is so disruptive that his or her behavior substantially interferes with the learning of other students in the class, the IEP team may provide the child with supportive instruction and related services at home in lieu of the child's present educational placement.

6.8.2 Services provided under these conditions shall be considered a change in placement on an emergency basis and shall require IEP team documentation that such placement is both necessary and temporary and is consistent with requirements for the provision of a free, appropriate public education.

6.8.3 In instances of parental objection to such home instruction, due process provisions apply.

6.8.4 To be eligible for supportive instruction and related services, the following criteria shall be met:

6.8.4.1 The child shall be identified as disabled and in need of special education and/or related services and enrolled in the school district or other public educational program; and

6.8.4.2 If absence is due to medical condition, be documented by a physician's statement where absence will be for two weeks or longer; or

6.8.4.3 If absence is due to severe adjustment problem, be documented by an IEP team that includes a licensed or certified school psychologist or psychiatrist, and that such placement is both necessary and temporary; or if for transitional in-school program, be documented by the IEP team that it is necessary for an orderly return to the educational program.

6.8.5 IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.

6.8.6 Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 30 days following the IEP meeting. Such instruction and related services may continue upon return to school when it is determined by the IEP team that the child needs a transitional program to facilitate his or her return to the school program.

6.9 Least Restrictive Environment Placement Decisions: The school district shall ensure that when a child with a disability is placed, a chronologically age-appropriate placement is provided.

6.9.1 An educational placement deemed appropriate by a child's IEP team shall not be denied merely because of the category of the child's disability, configuration of the existing service/support delivery system, availability of educational or related services, availability of space, or curriculum content or methods of curriculum delivery.

6.9.2 A change in placement requiring an IEP team meeting occurs when the district proposes to initiate or change the placement of the child. This includes a change in:

6.9.2.1 The amount of time of regular, special education and/or related services; or

6.9.2.2 The settings as identified in 6.1 – 6.8 above.

6.9.3 A change of placement does not include a change of teachers when the same services are being provided, a change in the scheduled of service delivery, or routine movement within a feeder pattern, i.e., grade level changes.

7.0 Vocational Education: When appropriate to individual needs of the children, as determined by the IEP team, each school district or other public agency responsible for the education of a child with a disability shall provide vocational education programs for such children in the Least Restrictive Environment.

7.1 Children with disabilities will be provided with equal access to recruitment, enrollment and placement activities.

7.2 Children with disabilities will be provided with equal access to the full range of vocational programs available to all students including occupational specific courses of study, cooperative education, apprenticeship programs and to the extent practicable, comprehensive career guidance and counseling services.

7.3 In addition to the vocational program, each school district or other public agency shall ensure the following supplementary services are provided to children with disabilities:

7.3.1 Codification of curriculum, equipment and facilities as needed;

7.3.2 Supportive personnel;

7.3.3 Instructional aids and devices;

7.3.4 Guidance, counseling and career development staff who are associated with the provision of such special services;

7.3.5 Counseling services designed to facilitate the transition from school to post-school employment and career opportunities. Carl D. Perkins Vocational & Technical Education Act of 1998.

7.3.6 Regular vocational programs with supportive services as identified by the IEP team; and

7.3.7 Special education vocational programs.

7.4 Each school district or other public agency must provide assurances that they will assist in fulfilling the transitional service requirement as defined in Individuals with Disabilities Education Act (IDEA).

7.5 Each school district or other public agency shall ensure the provision of an appropriate vocational education, including access to Career Pathways, as determined by the IEP team through the availability of a

continuum of vocational education placements. The continuum of placements includes, but is not limited to:

7.5.1 Regular vocational programs with no supportive services;

7.5.2 Regular vocational programs with supportive services as identified by the IEP team;

7.5.3 Special education vocational programs;

7.5.4 Self-contained vocational programs; and

7.5.5 Community based job training programs.

8.0 Facilities, Equipment and Materials: All facilities which house programs for children with disabilities must meet the standards approved by the State Board of Education with regard to space, health, fire, safety, and barrier-free regulations.

8.1 All instructional or treatment programs for children with disabilities shall provide appropriate materials and equipment for implementation of individualized education programs.

9.0 Length of School Day: The minimum length of the instructional school day for a child with a disability in Kindergarten through grade twelve shall be the same as it is for non-disabled children in those grades. The minimum length of the school day for disabled pre-Kindergarten children shall approximate that of non-disabled pre-Kindergarten children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for the five (5) hours per week minimum instruction. Provision of fewer hours of instructional time than required by the above standards is authorized only in unusual circumstances where a child is medically unable to endure the required length of school day, and then only by IEP committee decision after disclosure of the above standards to the child's parents/guardian.

10.0 Compulsory Attendance: Compulsory attendance will be in accordance with 14 *Del. C.*, Section 2703 and 2706, and shall apply to students with disabilities between the ages of 5 and 16. Attendance of children with disabilities under or over the compulsory school attendance age range, 14 *Del. C.*, Section 2702, shall be determined by the IEP conference and subject to the eligibility criteria and appeal procedures provided in these rules and regulations by the Department of Education.

11.0 Transportation: Transportation of all children to and from school is provided under 14 *Del. C.*, Ch. 29, and when special transportation needs are indicated in a child's IEP, transportation becomes a "related service."

11.1 Travel to and from school and between schools, including required specialized equipment, shall be at State expense when:

11.1.1 Such travel and/or specialized equipment requirements are specified on the child's IEP;

11.1.2 It is necessary for the implementation

of the child's IEP; and

11.1.3 Travel arrangements are made in consultation with the local transportation representative when unusual requirements are indicated.

11.2 Transportation provided to accommodate a related service shall be at local school district or other public agency expense. Transportation incidental to the disabled child's educational program shall not be at State expense, including, but not limited to work study arrangements; cooperative work arrangements; and extracurricular activities.

12.0 Discipline Procedures

12.1 Documentation, including the reasons for the action, must be made for any removal for more than 10 days. In addition to the removals identified in CFR Section 300.519, the following removals shall constitute a change in placement:

12.1.1 in-school removals for more than 10 days. If it deprives a child from (1) meeting the goals set out in the IEP, (2) progressing in the general curriculum - though in another setting, and (3) receiving those services and modifications described in the IEP; and

12.1.2 removals from transportation, if it results in the child's absence from school for more than 10 days.

12.2 Expedited Due Process Hearings

12.2.1 An expedited due process hearing shall be conducted by a single, impartial hearing officer appointed by the Department of Education from the attorney members of its Registry of Impartial Hearing Officers, and shall result in a decision within 45 days of the receipt of the request for a hearing.

12.2.2 Procedural rules for an expedited due process hearing shall differ from those for a regular due process hearing as follows:

12.2.2.1 Any party to a hearing has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least two (2) business days before the hearing.

12.2.2.2 At least two (2) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

12.2.2.2.1 The hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

12.3 Corporal Punishment: Prior to any proposed administration of corporal punishment to a child with a disability, a determination by the child's IEP team shall be made as to whether or not the misconduct prompting the proposed corporal punishment is related to, or a manifestation of, the child's disability.

12.3.1 The misconduct is related to, or a manifestation of, the child's disability, any discipline shall be in accordance with the child's IEP.

12.3.2 The misconduct is not related to, or a manifestation of the child's disability, corporal punishment may be administered in accordance with the same State and other provisions as applied to non-disabled children in the school district or other public agency.

12.4 Written Notice: The school district or other public agency shall ensure that the parents/guardian of each child with disabilities receive written notice of the rules and regulations applicable to such children with respect to discipline, suspension, expulsion, exclusion as a treatment procedure, and corporal punishment at the beginning of each school year or upon entry into a special education program during the school year.

13.0 Educational Surrogate Parent: An "Educational Surrogate Parent", hereinafter referred to as "Surrogate Parent", is defined as an individual appointed to represent a child who receives, or may be in need of, special education in all educational decision-making pertaining to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the child.

13.1 A surrogate parent shall be appointed by the Department of Education to represent a child in all matters pertaining to the identification, evaluation, educational placement and the provision of a free appropriate public education when any one of the following situations exist:

13.1.1 a parent cannot be identified;

13.1.2 after reasonable efforts, the whereabouts of the parent cannot be discovered. Reasonable efforts include, but are not limited to, telephone calls, letters, certified letter with return receipt or visit to the parents' last known address;

13.1.3 parental rights have been terminated, and legal responsibility has not been granted by a court of law to an individual, not to include a state agency, and the child has not been adopted; or

13.1.4 the child's parent has consented voluntarily, in writing, to the appointment of an educational surrogate parent. Such consent is revocable by the parent at any time by written notice to the Department of Education.

13.2 A surrogate parent is not required for a child who receives, or may be in need of, special education when the child is living in the home of a relative who agrees to act in the place of the parent.

13.3 An otherwise eligible child between the ages of 18 and 21 shall continue to be entitled to the services of a surrogate parent. Such child, however, who has not been declared incompetent by a court of law retains the right to make his/her own educational decisions. This right to make decisions is extended to include:

13.3.1 the right of access to a surrogate

parent who shall act as an advisor to the student;

13.3.2 the right to refuse the appointment of a surrogate parent;

13.3.3 the right to participate in the selection of a surrogate parent; and

13.3.4 the right to terminate the services of a duly appointed surrogate parent.

13.3.5 To exercise any of the above rights, the child shall, upon notification of eligibility for services of a surrogate parent, declare his/her intentions in writing.

13.4 Nomination and Candidacy of Surrogate Parent: The Department of Education shall be notified in writing of the names of potential surrogate parents by anyone having knowledge of the person's willingness to serve.

13.5 Screening of Potential Surrogate Parents: Each potential surrogate parent shall be screened by the Department of Education, in consultation with school districts, to determine that he/she meets candidacy requirements.

13.6 To serve as a surrogate parent, each candidate shall:

13.6.1 be at least 18 years of age;

13.6.2 be a legal resident of the United

States;

13.6.3 be competent to represent the child;

13.6.4 not be an employee of a district or other public or private agency responsible for, or involved in, the education or care of the child (a person is not an employee of a district or agency solely because he/she is paid by the district or agency to serve as a surrogate parent). Foster parents are not considered employees for purposes of this requirement.

13.6.5 have no interest that conflicts with the interest of the child he/she may represent (such determination is made on a case-by-case basis). In general, a person would have a conflict of interest if she/he were in a position that might restrict or bias his/her ability to advocate for all of the services required to ensure a free appropriate public education for the child.

13.6.6 receive instruction about State and federal laws and regulations, due process procedures, disability conditions and the availability of programs and services for students with disabilities, as provided by the Department of Education; and

13.6.7 be able to converse in the primary communication mode used by the child, whenever possible.

13.7 Training for Surrogate Parents: Initial training for surrogate parents shall be provided by the Department of Education. Such training sessions shall be conducted at least annually.

13.7.1 The Department of Education shall issue a Certificate of Training to qualified persons who complete the required surrogate parent training.

13.7.2 The Department of Education shall notify districts and the Department of Services for Children, Youth and Their Families of persons who are certified as surrogate parents.

13.7.3 Follow-up training shall be provided by the Department of Education.

13.8 Appointment of Surrogate Parents: Each district shall be responsible for having procedures to locate and refer eligible children. Any person or entity, however, may identify a child believed to require a surrogate parent. Referral shall be made on the designated form to the Department of Education with a copy sent to the supervisor of special education in the district in which the child will receive or is receiving special education.

13.8.1 The Department of Education shall determine the child's eligibility for a surrogate parent.

13.8.2 The Department of Education staff person responsible for surrogate parents or his/her designee shall recommend to the Department of Education a certified surrogate parent to represent the student after consultation, as appropriate, with the local school district regarding the match of the surrogate parent to a particular child.

13.8.3 The Department of Education shall notify, in writing, the district and/or referring agency/person of the appointment.

13.8.4 A person may be appointed to serve as a surrogate parent for more than one child to the extent that such appointment is consistent with effective representation of the children. In no event shall one person be appointed as a surrogate parent for more than four children.

13.9 Responsibilities of Surrogate Parent: Each person assigned as a surrogate parent shall represent the child in all education decision-making processes concerning that child by:

13.9.1 becoming thoroughly acquainted with the child's educational history and other information contained in school records and reports relating to the child's educational needs;

13.9.2 granting or denying permission for initial evaluation or placement, and safeguarding the confidentiality of all records and information pertaining to the child to comply with State and federal regulations, including the use of discretion when sharing information with appropriate people for the purpose of furthering the interests of the child;

13.9.3 participating in the development of an IEP for the child;

13.9.4 reviewing and evaluating special education programs pertaining to the child and other such programs as may be available;

13.9.5 initiating mediation, complaint, hearing, or appeal procedures when necessary regarding the identification, evaluation, or educational placement of the child, and seeking qualified legal assistance when such

assistance is in the best interest of the child; and

13.9.6 taking part in training provided to become familiar with the State and federal laws and regulations, due process procedures regarding the education of children with disabilities, information about disabilities, and the availability of programs and services for such children.

13.10 The term of service of the surrogate parent shall be the length of time which the surrogate parent is willing to serve; or the length of time the child requires a surrogate parent; or so long as the qualifications to serve and the performance of duties as a surrogate parent are met.

13.11 Termination of Services of a Surrogate Parent: If the surrogate parent wishes to terminate his/her service in that capacity, he/she shall notify the Department of Education, in writing, at least thirty days prior to termination of such services.

13.11.1 The Department of Education shall determine whether each surrogate parent's appointment shall continue or be terminated. Termination shall be justified based only on material failure of the surrogate parent to discharge his/her duties or maintain confidentiality. The surrogate parent shall be given notice of a decision to terminate and shall have an opportunity to respond.

13.12 Compensation for Services as a Surrogate Parent: Surrogate parents shall be reimbursed by the Department of Education for all reasonable and necessary expenses incurred in performance of duties. Reasonable and necessary expenses include, but are not limited to:

13.12.1 mileage for attendance at meetings concerning the child being represented; and

13.12.2 long-distance telephone calls to the school in which the child is being served; and

13.12.3 photocopying of the child's records.

13.13 Liability of the Surrogate Parent: A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child in protecting the special education rights of the child.

14.0 Procedural Safeguards

14.1 The district may require advance notice when parents or guardians wish to visit a proposed educational program.

14.2 Written notice must be given to parents of children with disabilities no less than ten (10) business days unless waived by agreement of both parties. In cases involving a change of placement for disciplinary removal, written notice must be provided no less than three (3) business days.

14.3 Documentation of attempts to notify the parents/guardian, by the district or any other public agency, shall be maintained.

14.4 Mediation of other disputes between the school and the parents/guardian as to the child's education program shall be offered at the discretion of the Department

of Education.

14.4.1 The process shall use an impartial, trained individual to assist the parties in working out acceptable solutions in an informed, non-adversarial context.

14.4.2 Parents may be accompanied and advised by individuals of their choice.

14.4.3 The district shall ensure the attendance of a representative with authority to make decisions and commit resources to agreed upon services.

14.4.4 If an agreement is reached as part of the mediation process, it is considered an educational record, which may be released at the parent's discretion.

15.0 Due Process Procedures

15.1 Initiation of Hearing Procedures: A request for a Due Process Hearing shall be made in writing to the Secretary of Education.

15.2 Legal Services: The Secretary of Education's response to the request for a hearing shall include a statement regarding free or low cost legal services.

15.3 The attorney member shall act as chairperson for the Due Process Hearing Panel, shall preside at all hearings, and shall write the final decision of the Due Process Hearing Panel. Any decision must have the concurrence of two members of the due Process Hearing Panel. In those cases where the chairperson holds a minority opinion, the educator member shall write the decision. Any member holding a minority opinion may write a separate report, which shall be attached to the decision.

15.4 Registry of Impartial Hearing Officers: The Department of Education shall keep a list of persons who may serve as hearing officers.

15.5 The hearing shall be scheduled by the chairperson of the Due Process Hearing Panel.

15.6 Any party to a hearing has the right to prohibit the introduction at the hearing of testimony of any witness whose identity has not been disclosed to the parties at least 5 business days before the hearing.

15.7 The parents/guardian shall have the right to receive a written decision which includes the following parts: statement of issues; summary of the proceedings; summary of evidence; findings of facts; conclusions of law; and summary of the issues on which the parties have prevailed.

15.8 The impartial Due Process Hearing Panel shall reach a final decision, and the chairperson shall record the vote of each panelist. The chairperson shall forward a copy of its final decision to the parties, and to the Department of Education.

15.9 The Department of Education shall forward the decision, with all personally identifiable information deleted, to the chairperson of the Governor's Advisory Council for Exceptional Citizens, and make those findings and decisions available to the public by placing legal notice annually in newspapers of sufficient circulation in each of

the three Delaware counties, that this information may be obtained through the Department of Education.

15.10 The chairperson of the Panel shall establish a timeline for the hearing process. In granting specific extensions, the chairperson shall ensure that the petitioner's right to redress is in no way diminished or unnecessarily delayed.

15.11 Non-Exclusivity of Remedies: The remedies identified in this section should not be viewed as exclusive. In certain contexts, other remedies created by law or local district practice may be available.

15.12 Non-Compliance: When the finding indicates non-compliance, the following procedures shall be followed:

15.12.1 The agency shall be presented with the findings and a time frame for corrective action specified by the Department of Education.

15.12.1.1 If the agency agrees with the findings and completes a specified corrective action within a time frame specified by the Department of Education, follow-up activities by the Department of Education will be conducted to verify full compliance.

15.12.1.2 A report of the findings will be prepared and sent to the Chief Administrative Officer of the agency and to the State Secretary of Education and the complainant.

15.13 Compliance: When the findings reveal full compliance, no further action shall be taken.

15.14 Any complainant under this section shall file the complaint in writing with the Department of Education, P. O. Box 1402, Dover, DE 19903, and shall include in the complaint the following:

15.14.1 the name of the agency against which the complaint is filed;

15.14.2 a statement that the agency has violated a requirement of the Individuals with Disabilities Education Act (IDEA) and/or the provisions of this Manual;

15.14.3 the facts on which the statement is based;

15.14.4 the time frame in which the incident(s) occurred;

15.14.5 a description of the attempts made to resolve the issue(s) prior to filing this action; and

15.14.6 name, address, phone number(s) of individual(s) filing the complaint and the legal representative, if any, or of individuals representing a public agency or private organization filing a complaint.

16.0 Confidentiality of Student Records

16.1 Parental Refusal to Release Records: In the event that a parent refuses to provide consent before personally identifiable information is disclosed to anyone other than officials of the district or State Department of Education, the parent shall be advised in writing that the district has either:

16.1.1 Recognized that refusal and will not forward the records; or the district will exercise its option to request an impartial due process hearing in order to effect the release of records. In the event that the district elects to seek a due process hearing, the district shall send the parent a copy of the *Special Education: Parents' Guide to Rights and Services* and a copy of parents' due process rights as delineated in this Manual.

17.0 High School Graduation

17.1 Continuing their Education: Students with disabilities who are unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at district expense, until their 21st birthday.

17.2 Graduation Process: Regardless of the document received at graduation by the student, whether a diploma or a certificate of performance, the student shall not be discriminated against during the graduation ceremonies. Specifically, a student with disabilities shall be allowed to participate in graduation exercises without reference to his/her disability, educational placement or the type of document conferred.

18.0 Interagency/Special Programs

18.1 Interagency and Least Restrictive Environment: When it is determined by the IEP team, in making the placement decision, that a child's educational needs cannot be met appropriately in the child's district of residence, inter-district or interagency programs shall be considered within least restrictive environment requirements.

18.2 Interagency Agreements: A written Interagency Agreement shall be developed between or among the local school districts or agencies when special education and related services for children with disabilities are provided in whole, or in part, by a district or districts other than the district of residence.

18.2.1 The agreement may be initiated by the ~~LEA~~ district, agency] or the ~~SEA~~ DOE]

18.2.2 The ~~SEA~~ DOE] shall be a party to the agreement when the services are provided through a special school or program approved by the State Board of Education.

18.2.3 Each Interagency Agreement shall include the:

18.2.3.1 Title of the agreement;

18.2.3.2 Parties involved and their authority to provide special education and related services;

18.2.3.3 Purpose of the agreement;

18.2.3.4 Roles and responsibilities of each agency, including access to records and **[record]** transfer procedures, **[program]** implementation, dissemination, **[and]** training activities, **[and]** funding amounts and sources;

18.2.3.5 [End dates and] [R ~~re~~authorization schedule; ~~and negotiation procedures]~~

18.2.3.6 Procedures to resolve disputes regarding program and fiscal issues; and

18.2.3.7 Signature and title of each party's authorized administrator.

18.3 Responsibility for Placement in Interagency Programs

18.3.1 For initial placement, the child's district of residence shall be responsible for identification, evaluation, and placement procedures including:

18.3.1.1 Setting the date, time, and place of all meetings;

18.3.1.2 Chairing, designating, or agreeing upon a chairperson for all meetings;

18.3.1.3 Communicating the name of the child to be discussed; the date and place of meeting to individuals involved; ~~and]~~

~~18.3.1.4 Receiving all requests for review and appeal; and]~~

18.3.1.5 4] Communicating recommendations of staffing to all appropriate staff.

18.3.2 When it is suspected the child's need for special education can only be met in an inter-district/interagency program, then an IEP meeting shall be arranged by the district of residence. The following procedures for an IEP meeting shall be followed:

18.3.2.1 Representatives of the inter-district/interagency program shall participate in the IEP meeting.

18.3.2.2 [A representative of T]he district of residence shall be a member of the child's IEP team.

18.3.2.3 Arrangements for all evaluation and diagnosis, whether initial or reevaluation, shall be the responsibility of the child's district of residence.

19.0 Special Programs for Children with a Visual Impairment: Services provided to the children with visual impairments by the Department of Education, the local school districts and the Division for the Visually Impaired shall be implemented through an interagency agreement.

~~20.0 Special Programs for Children who are Deaf and Hard of Hearing: The State Committee for the Deaf and Hard of Hearing shall be established by the Director of the Delaware Programs for the Deaf and Hard of Hearing and the Deaf/Blind in conjunction with the Department of Education.~~

~~20.1 The Committee shall provide a means for determining eligibility, program development, and coordination that is unique for the low incidence group of children with disabilities whose major disability is hearing loss.~~

~~20.1.1 Complete minutes of the Committee meetings shall be sent to the Department of Education.]~~

~~20.0] Special Programs for the Children who are Deafblind: The Margaret S. Sterck School, Delaware School for the Deaf (DSD), located in the Christina School District, shall have administrative responsibility for providing services to the deafblind program.~~

~~20.0] 1 [The Director and Coordinator of the Deafblind Program DSD] shall establish a program management committee in consultation with the Department of Education. Complete minutes of the committee meetings shall be sent to the State Department of Education.]~~

~~20.1] 0 Special Programs for Children with Autism:~~

~~20.1] 1 Definitions of terms applicable only to special programs for children with autism.~~

~~20.1] 1.1 "Behavior Management Procedure" means any procedure used to modify the rate or form of a target behavior.~~

~~20.1] 1.2 "Behavior Management Target" means any child's behavior that either causes or is likely to cause (a) injury to the child (e.g., self-abuse), (b) injury to another person (e.g., aggression), (c) damage to property, (d) a significant reduction in the child's actual or anticipated rate of learning (e.g., self-stimulation, non-compliance, etc.) or (e) a significant reduction in the societal acceptability of a child (e.g., public masturbation, public disrobing, etc.).~~

~~20.1] 1.3 "Emergency Intervention Procedure" means any procedure used to modify ~~unpredictable and episodic] dangerous behavior [management objectives/targets.] [(e.g., self-injurious behaviors, physical aggression [toward others], [destruction of property property destruction) identified in a behavioral intervention plan.]~~~~

~~20.1] 1.4 "Ethical Use" means the application of a procedure in a manner that is consistent with current community values and protects all of a child's rights.~~

~~20.1] 1.5 "Informed Consent" means knowing and voluntary consent by the parent(s), ~~for guardian]~~ based upon a thorough explanation by the program staff member supervising the ~~[individualized case by case] Behavior Management procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the Procedure at any time.~~~~

~~20.1] 1.6 Least Restrictive Procedure means that behavior management procedure which is the least intrusive into, and least disruptive of, the child's life, and that represents the least departure from normal patterns of living that can be effective in meeting the child's educational needs.~~

~~20.1] 1.7 School means any public school or program (special education or otherwise), which has enrolled a child classified with autism.~~

~~21.1.8 Parent means any parent, surrogate parent or legal guardian.~~

~~21.1.9 8]Accepted Clinical Practice means any behavior management procedure or treatment, [the effectiveness of which has received clear empirical support as documented by publication in that has been published in referenced] peer-reviewed journals or similar professional literature.~~

~~21.1.2 [The Statewide Monitoring Review Board (SMRB) shall be established by the Director of the Delaware Autistic Program (DAP, created under Section 1302, Delaware Code) in conjunction with the Department of Education.~~

~~22.2.1 The purpose of the Board shall be to review the special education and related services needs and program of children with autism for whom DAP is responsible, including children with autism whose placement in private facilities has been authorized by the Secretary of Education, and to make recommendations for program improvement.~~

~~22.2.2 The Board shall consist of the following members:~~

~~22.2.2.1 Director: Director of DAP;~~

~~22.2.2.2 Education Associate: Exceptional Children Programs (responsible for DAP);~~

~~22.2.2.3 Program Coordinator of DAP;~~

~~22.2.2.4 Representative: Staff person from each DAP center having a program serving children with autism;~~

~~22.2.2.5 Representative: Local Education Agency (based upon the meeting agency);~~

~~22.2.2.6 Representative: Public and Private Agencies (based upon the meeting agenda);~~

~~22.2.2.7 Representative: Medical/health professional (based upon meeting agenda);~~

~~22.2.2.8 Representative: Division of Vocational Rehabilitation (based upon meeting agenda);~~

~~22.2.2.9 Representative: Community based Vocational Agency (Private Sector/based upon meeting agenda);~~

~~22.2.2.10 Representative: Community-based Vocational Agency (Private Sector/based upon meeting agenda);~~

~~22.2.2.11 Representative: Early Childhood Development Specialist (Private Sector/based upon meeting agenda);~~

~~22.2.2.12 Representative: Staff person from an in State or out of State program serving children with autism;~~

~~22.2.2.13 Representative: Non-voting public representative nominated annually by the Statewide Parent Advisory Committee (SPAC) and who does not have a child enrolled in DAP.~~

~~22.2.3 Board Procedures~~

~~22.2.3.1 The Chairperson of the Board shall be the Director of DAP.~~

~~22.2.3.2 Decisions of the Board shall be determined by a majority vote of the members present.~~

~~22.2.3.3 Four or more members present shall constitute a quorum.~~

~~22.2.3.4 Oral or written notice of meeting shall be at least 7 days in advance unless unanimous consent shall otherwise permit.~~

~~22.2.3.5 The Chairperson shall set mutually agreeable times and places for meetings, which shall be scheduled monthly contingent upon agenda items.~~

~~22.2.4 The SMRB shall discharge its responsibilities in accordance with I.D.E.A. and the Administrative Manual for Special Education Services. The SMRB shall function in an advisory capacity; and procedural safeguards guaranteed to children with autism, their parents, educational surrogate parents, or guardians and to local school districts or agencies shall not be diminished by the activities of the SMRB. Specific responsibilities include:~~

~~22.2.4.1 Reviewing, at least annually, the identification, evaluation, educational program and placement of each child with autism and the provision of a free appropriate public education for children with autism;~~

~~22.2.4.2 Recommending appropriate services and/or programs necessary for children with autism in Delaware;~~

~~22.2.4.3 Assisting local education agencies and other appropriate agencies in implementing SMRB recommendations;~~

~~22.2.4.4 Developing and annually reviewing SMRB policies and procedures;~~

~~22.2.4.5 Recommending solutions to disputes within or between districts or agencies;~~

~~22.2.4.6 Submitting an annual report by September 1 of each year to the administering school district, Department of Education, and the State Board of Education that shall include the findings and recommendations of the non-voting public representative.~~

~~22.2.5 Copies of the minutes of the SMRB meetings, including recommendations made by the SMRB, shall be sent to the Department of Education.~~

~~22.2.6 A copy of pertinent portions of the reviews and recommendations pertaining to the identification, evaluation, and educational program and placement of each autistic child and the provision for a free appropriate public education to such children shall be sent to the appropriate parents and school district or agency.~~

~~Reserved.]~~

~~21.1.3 A Parent Advisory Committee (PAC) shall be~~

established by each local education agency operating a center for the Delaware Autistic Program.

2021 1].3.1 The function of the PAC shall be to advise the local education agency on matters pertaining to the local center.

2021 1].3.2 Each PAC shall meet no less than four times each year and must be representative of the age groups of children with autism served by the local center.

2021 1].3.3 When a local education agency operates a residential program, at least one member of the PAC shall be a parent of a child with autism served in the residential program associated with that center.

2021 1].4 A Statewide Parent Advisory Committee (SPAC) shall be established whose membership shall consist of one representative elected annually from each local education agency PAC.

2021 1].4.1 The SPAC shall meet no less than four times each year with the Director of DAP advising on matters pertaining to the program.

2021 1].4.2 The establishment of bylaws for the SPAC shall be by vote of all of its eligible members.

2021 1].4.3 A current statewide membership list shall be provided to all parents ~~[surrogate parents, or legal guardians]~~.

2021 1].4.4 Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee (SPAC).

2021 1].5 A Peer Review Committee (PRC) shall be established by the Director of the Delaware Autis~~tiem~~ Program (DAP) and the Department of Education in consultation with the Statewide Monitoring Review Board (SMRB).

2021 1].5.1 Purpose: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving children with autism.

2021 1].5.2 Composition: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post-doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be external to the Delaware Autis~~tiem~~ Program (DAP), the Department of Education, any Delaware school district, and any other State agency or department, excluding State institutions of higher education. Members shall not belong to any in-State committee, council, board or program that deals directly with children with autism.

2021 1].5.3 Operation: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

2021 1].5.4 Peer Review Committee (PRC)

Responsibilities

2021 1].5.4.1 The PRC shall meet at least every three months to review those behavior management procedures requiring after-the-fact examination. ~~[(See Section 2021~~ 1].7.1)]

2021 1].5.4.1.1 A quorum shall consist of a majority of the Committee.

2021 1].5.4.1.2 The PRC chairperson shall announce the dates of review at least one month prior to the review date.

2021 1].5.4.2 The PRC shall meet at least six (6) times per year to review procedures requiring prior, case-by-case review that have been granted interim or on-going approval. ~~[The M]~~ monthly review shall continue until said procedure has been discontinued or ~~[the]~~ PRC votes otherwise. This review may be held jointly with HRC.

2021 1].5.4.3 The PRC chairperson shall invite staff members of DAP responsible for implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non-voting capacity.

2021 1].5.4.4 The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children engaged in behaviors that pose a significant health risk to the child or others, a significant ~~[risk of]~~ damage to property, and/or a significant reduction of learning.

2021 1].5.4.5 The PRC shall review and evaluate the training and supervision for the staff that will carry out all behavior management procedures requiring prior, ~~[individual case by case]~~ review and may evaluate the training of staff carrying out procedures requiring after-the-fact review.

2021 1].5.4.5.1 The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review.

2021 1].5.4.6 The PRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education and the HRC chairperson.

2021 1].5.4.6.1 These minutes shall be submitted within two weeks of each meeting.

2021 1].5.4.6.2 An oral summary of the PRC recommendations shall be made within twenty-four hours following the PRC meeting to the Director of DAP and the HRC chairperson.

2021 1].6 A Human Rights Committee (HRC) shall be established by the Director of the DAP and the Department of Education in consultation with the ~~[Statewide]~~ Autistic Program Monitoring Review Board.

2021 1].6.1 Purpose: The purpose of the HRC shall be to review the ethical and children rights issues involved in the use of behavior management procedures to ensure their

humane and proper application.

242 1].6.2 Composition: The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of children enrolled in the DAP, who are not employees of the Department of Education, and who are not members of any in-State organization, agency, or program that deals directly with children with autism. No member of the HRC shall be a member of the PRC.

242 1].6.3 Operation: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

242 1].6.4 Human Rights Committee Responsibilities

242 1].6.4.1 Whenever a school proposed to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the proposed use of the behavior management procedure. [This review shall occur] within seven days [after of] the PRC chairperson[~~is~~ informs notification] the HRC chairperson of PRC's recommendations.

242 1].6.4.1.1 A quorum shall consist of a majority of the Committee.

242 1].6.4.1.2 This review, however, may be held jointly with the PRC.

242 1].6.4.2 The HRC chairperson shall invite staff members who are responsible for the implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., consultant, parent) to participate as needed in a non-voting capacity.

242 1].6.4.3 The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

242 1].6.4.4 The HRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Director, Exceptional Children Group, and the PRC chairperson.

242 1].6.4.4.1 These minutes shall be submitted within two weeks of each meeting.

242 1].6.4.4.2 An oral summary of the HRC recommendations shall be made within twenty-four hours following the HRC meeting to the Director of DAP and the PRC chairperson.

242 1].7 Joint responsibilities of the Peer Review and Human Rights Committees are as follows:

242 1].7.1 Issue a written statement indicating which behavior management procedure(s) shall be recommended for use:

242 1].7.1.1 Without further PRC/HRC review during the year approved;

242 1].7.1.2 Without a case-by-case PRC/HRC review but with after-the-fact review (timelines to be

established by the PRC); or

242 1].7.1.3 Only with prior case-by-case PRC and HRC (before-the-fact) review;

242 1].7.2 Recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;

242 1].7.3 Review a school's proposed Emergency Intervention Procedures for children with autism and issue a written statement indicating which Emergency Intervention Procedures shall be recommended;

242 1].7.3.1 For use without after-the-fact reporting to the PRC/HRC; or

242 1].7.3.2 For use with after-the-fact reporting to the PRC/HRC;

242 1].7.4 Issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle.

242 1].7.4.1 Notice shall be given to parents of children with autism in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures.

242 1].7.4.2 A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.

242 1].7.5 The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC/HRC annual review at least one month prior to the review date.

242 1].7.5.1 At the discretion of either chairperson, Committees may meet jointly or separately to conduct before-the-fact and after-the-fact reviews.

242 1].7.6 Approve, before-the-fact, the housing of children under age twelve with a child over age sixteen in a community-based residential program for children with autism operated by a school district designated and approved by the Secretary of Education as the administering agency for the DAP.

242 1].7.7Review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case-by-case review.

242 1].7.7.1Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members.

242 1].7.7.2Proposed prior review procedures not requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairperson to be reviewed within two weeks of submission of the proposal.

242 1].7.8 Have access to the educational records of any child with autism for purposes of 242 1].5.1 and 242 1].6.1 of this section.

242 1].7.8.1 A quorum of a joint meeting shall consist of a majority of combined membership.

2021 11.7.9 Submit written Procedural Descriptions for Behavior Management and Emergency Interventions

2021 11.7.9.1 Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular child with autism, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC.

2021 11.7.9.1.1 The annual date of review shall be announced by the HRC chairperson at least one month prior to the review date.

2021 11.7.9.1.2 The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons.

2021 11.7.9.1.3 The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules.

2021 11.7.9.1.4 PRC and HRC may request pertinent information needed for the completion of reviews.

2021 11.7.9.2 After reviewing each behavior management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after-the-fact, or prior case-by-case review). A school serving children with autism shall then submit proposals in accordance with PRC/HRC recommendations.

2021 11.7.9.3 Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC/HRC review until the next annual joint review. A school shall require that the use of these procedures be indicated in a child's IEP.

2021 11.7.9.4 Behavior management and emergency intervention procedures that require after-the-fact review only shall be used by a school without case-by-case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

2021 11.7.9.4.1 The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

2021 11.7.9.5 Behavior management procedures that require prior case-by-case review shall be submitted to the PRC and HRC for joint review prior to implementation.

2021 11.7.9.5.1 If the PRC and HRC decide not to review the case jointly, the PRC shall first review the proposal.

2021 11.7.9.5.2 The proposal shall contain information determined by PRC and HRC and set forth in their operating rules.

2021 11.7.9.5.3 Recommendations and rationale for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

2021 11.7.9.6 Following the PRC

recommendation (or following joint PRC/HRC approval), written informed parental consent shall be obtained by the school.

2021 11.7.9.6.1 If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s).

2021 11.7.9.6.2 Parents may withdraw consent at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

2021 11.7.9.7 Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations.

2021 11.7.9.7.1 Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure.

2021 11.7.9.7.2 Whenever a proposal is recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

2021 11.7.9.8 Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school.

2021 11.7.9.8.1 If the procedure is to be modified, informed written consent shall be obtained from the parents.

2021 11.7.9.9 The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing the records (which shall be kept on a daily basis) on the use and results obtained by implementing the procedure.

2021 11.7.9.9.1 Records shall be kept in an objective, quantitative form, permitting easy evaluation of child data.

2021 11.7.9.9.2 The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

2021 11.7.9.10 Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been recommended as described in 2021 11.7.7.

2021 11.8 Private facilities serving autistic children shall have Peer Review and Human Rights Committee policies as follows:

2021 11.8.1 Private facilities serving children with autism located in Delaware shall have Peer Review Committee and Human Rights Committee policies that

comply with DELACARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families).

212 1]8.2 Private facilities serving Delaware children with autism located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located.

212 1]8.2.1 Said policies shall be reviewed by Delaware's Department of Education to determine that they grant protection substantially equivalent to that provided by Delaware for children prior to any recommendation of approval for private placement by the State Board of Education.

212 1]8.3 Private facilities serving Delaware children with autism located in states which have no Peer Review Committee and Human Rights Committee policies shall have written Peer Review and Human Rights Committee policies that shall be reviewed by Delaware's Department of Education in consultation with Delaware's PRC, to determine that they grant protection substantially equivalent to that provided by Delaware for children, prior to any recommendation of approval for private placement by the Secretary of Education.

212 1]8.4 Private facilities serving Delaware children with autism located in states which require substituted judgment or other court order for the use of aversive or related restrictive procedures, and which have obtained such an order for each Delaware child, shall be deemed to have met the peer review and human rights requirements of this section.

212 1]9 Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely the educational program of a child with autism, the administrator of the center shall contact the parent and request a medication review with the parent and physician.

212 1]10 Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of DAP and the Department of Education.

213 2]0 Students in Need of Unique Educational Alternatives

213 2]1 Unique Educational Alternative support shall be available for those children with disabilities who have needs that cannot be addressed through the existing resources/programs of the State. Unique Educational Alternatives include, but are not limited to, private residential placements and private day programs.

213 2]1.1 The Secretary of Education shall approve children for Unique Educational Alternative support and the type of Unique Educational Alternative Support to be provided when such support is necessary to provide special education and related services to a child with a disability.

213 2]1.2 If the Unique Educational Alternative is a private residential or private day placement, the Secretary of Education shall approve the designation of each child eligible for private placement and the private school or facility in which the approved child is to be enrolled.

213 2]1.3 Such approval of unique educational alternatives shall be for no more than a one-year period, ending no later than August 31 of the year in which the child is to be enrolled.

213 2]2 [To the extent authorized ~~Except as otherwise provided~~ by the General Assembly in the Budget Act, [14]he Department of Education [shall is required to] convene the Interagency Collaborative Team (ICT) to review the expenditures for [new] placements of students in need of Unique Educational Alternatives.

213 2]2.1 The Interagency Collaborative Team (ICT) membership shall consist of:

213 2]2.1.1 Division Director, Division of Child Mental Health Services, DSCYF;

213 2]2.1.2 Division Director, Family Services of DSCYF;

213 2]2.1.3 Division Director, Division of Youth Rehabilitation Services of DSCYF;

213 2]2.1.4 Division Director, Division of Mental Retardation of DHSS;

213 2]2.1.5 Division Director, Division of Alcoholism, Drug Abuse and Mental Health, DHSS;

213 2]2.1.6 Director of the Office of the Budget, or designee;

213 2]2.1.7 Controller General or designee;

213 2]2.1.8 Director, Exceptional Children's Group, DOE, who will serve as Chair;

213 2]2.1.9 Associate Secretary, Curriculum & Instructional Improvement, DOE.

213 2]2.2 A Director shall be assigned to the Interagency Collaborative Team (ICT) and may designate staff to [be their] represent[ative] on the Interagency Collaborative Team (ICT) only if these designated representatives are empowered to act on behalf of the Division Director, including commitment of Division resources, for a full fiscal year.

213 2]2.3 The Interagency Collaborative Team (ICT) shall invite to its meetings: a representative of a responsible school district for the case under consideration, the parents of the child, and other persons the team believes can contribute to their deliberations.

213 2]2.4 The Interagency Collaborative Team (ICT) shall:

213 2]2.4.1 Review existing assessments of new referrals;

213 2]2.4.2 Prescribe, if required, additional assessments for new referrals;

213 2]2.4.3 Review proposed treatment plans of new referrals;

23 2].2.4.4 Recommend alternatives for treatment plans of new referrals;

23 2].2.4.5 Coordinate interagency delivery of services;

23 2].2.4.6 Review at least annually, current Unique Educational Alternatives for the appropriateness of treatment plans and transition planning;

23 2].2.4.7 If appropriate, designate a Primary Case Manager for the purpose of coordination of service agencies;

23 2].2.4.8 If appropriate, designate agencies to be involved in collaborative monitoring of individual cases.

23 2].2.5 The Interagency Collaborative Team (ICT) shall ensure that state costs incurred as the result of a Team recommendation or assessment of a child currently funded from the Unique Educational Alternatives appropriation for this purpose in the Budget Act will be covered from the existing appropriation.

23 2].2.5.1 New referrals will be assessed in the interagency manner described above.

23 2].2.5.2 The Interagency Collaborative Team (ICT) may accept and review cases initiated by other agencies, but in all cases, the school district of residence must be involved in the review.

23 2].2.5.3 Cases reviewed by the Interagency Collaborative Team (ICT) will employ Unique Educational Alternatives funding to cover state costs to the extent determined appropriate by the Interagency Collaborative Team.

23 2].2.5.4 Other agencies may recognize a portion of the responsibility for the treatment of these children if determined appropriate by the Team. Funds may be transferred upon the approval of the Budget Director and the Controller General.

23 2].2.6 The Interagency Collaborative Team (ICT) shall report on its activities to the Governor, Budget Director, President Pro-Tempore, Speaker of the House and the Controller General by February 15 of each year. The report shall address the status of items addressed in the previous February ICT Annual Report.

23 2].3 Interagency Collaborative Team (ICT) Review Criteria

23 2].3.1 The Interagency Collaborative Team (ITC) shall recommend to the Secretary of Education action on referrals for approval of Unique Educational Alternatives based on the following criteria:

23 2].3.1.1 A school district or other public agency support/program is either not available or is not adequate.

23 2].3.1.2 The school district certifies that the school district cannot meet the needs of the child with existing resources and/or program.

23 2].4 Procedures for Districts Seeking to Place

Students in Unique Educational Alternative Settings

23 2].4.1 The responsible district and fiscal agency for a child seeking Unique Educational Alternative support shall be the child's district of residence. The district is responsible for inviting the parent, and, if appropriate, the student, to the ICT meeting.

23 2].4.2 The chairperson of the Interagency Collaborative Team shall be contacted ~~by telephone~~ by the district special education supervisor or designee as soon as the district has reason to believe Unique Educational Alternative support may be needed.

23 2].4.3 [The IEP team that includes district level representation ~~The district level IEP Committee~~] shall meet and determine if the child's need for special education and related services can be met within the existing resources/programs available to the district.

23 2].4.3.1 Representatives of all agencies involved with the child shall be invited to attend this meeting.

23 2].4.4 The district shall submit an application to the Chair of the ICT at least five business days before the meeting if it is determined that the child's needs for special education and related services as delineated on the child's IEP cannot be met through existing resources/programs.

23 2].4.5 The application will include:

23 2].4.5.1 Current and other relevant assessment information;

23 2].4.5.2 A historical summary of all placements and/or major interventions and support services that have been provided to the student;

23 2].4.5.3 A current IEP;

23 2].4.5.4 A concise statement of the needs that cannot be addressed through existing recourses or programs;

23 2].4.5.5 A list of all agencies and resources that are currently supporting the child and the family; and

23 2].4.5.6 An Interagency Release of Information Form.

23 2].5 Procedures for the ICT

23 2].5.1 The ICT shall review the application at its next monthly meeting.

23 2].5.2 Parents and representatives of all involved agencies shall be invited to participate in the meeting.

23 2].5.3 Recommendations of the Interagency Collaborative Team shall be shared in writing with the school district, parents and other agency staff involved with the case within five business days. The ICT may:

23 2].5.3.1 Request additional information before making a final recommendation. This may include the involvement of additional agencies, additional assessments and/or review of additional programs/resources that the local team had not considered;

23 2].5.3.2 Request for additional information

shall be sent to the school district, parents, and other agency staff involved in the case within five business days of the meeting and as soon as the additional information is available, the case shall be brought back to the ICT for further review.

213 2].5.3.3 Recommend approval and agree that the child has needs that cannot be addressed through existing programs/resources. The local team may then develop the specifics of the Unique Educational Alternative support; or

213 2].5.3.4 Recommend rejection and ask the local team to use existing programs/resources to meet the educational needs of the children.

213 2].5.4 Final recommendations of the ITC shall be shared in writing with the school district, parents and other agency staff involved in the case within five business days.

213 2].5.4.1 If the recommendation is for approval, the local team shall develop the specifics, including costs, of the Unique Educational Alternative.

213 2].5.4.2 The final plan, with costs, shall be submitted to the Chair of the ICT.

213 2].5.4.3 The Chair shall submit the recommendations for approval to the Secretary of Education.

213 2].5.4.4 A recommendation for rejection shall be submitted by the Chair of the ICT to the Secretary of Education for final action.

213 2].5.4.5 The parent, district superintendent, the special education supervisor, and the director of any other involved agency shall be notified in writing by the Secretary of Education, following the action.

213 2].6 Financial Aid for Unique Educational Alternatives

213 2].6.1 Financial aid for children approved for Unique Educational Alternative support by the Secretary of Education, other than private residential or day schools, shall include only those costs that are not covered by an existing funding line.

213 2].6.1.1 The Department of Education shall pay 85% of the Unique Educational costs and the local school district will pay 15% of the costs unless waivers for the local school district are recommended by the Interagency Collaborative Team (ICT).

213 2].6.2 Financial aid for children with disabilities approved for private placement by the Department of Education shall include maintenance, transportation and tuition.

213 2].6.2.1 The Department of Education shall pay 85% of the private placement costs and the local school district shall pay 15% of the private placement costs.

213 2].6.2.2 The amount authorized for payment shall be the amounts charged by the private school or facility for tuition or program costs, transportation and maintenance, in accordance with the definitions in the

Delaware Code.

213 2].7 Independent Placements by School District or Agency: A school district or other public agency may independently place a child with a disability in a private or public school or facility and provide the tuition from appropriate school district or other agency funds without Department of Education approval.

213 2].7.1 Such an independent placement in a private or public out-of-state facility using local funds must, nonetheless, be certified as a program meeting the applicable standards of the host state.

213 2].8 School District/Agency Responsibility for Private Placements: When a school district or other public agency responsible for the education of children with disabilities is unable to provide an appropriate program, the district or other public agency may refer the student for [consideration of a unique educational alternative, including a] private placement.

213 2].8.1 District Certification and Documentation

213 2].8.1.1 The local school district certification that the child is eligible for private placement and the statement pertaining to the lack of an appropriate program shall be forwarded on the designated forms to the Department of Education for review by the Interagency Collaborative Team (ICT) prior to action by the Secretary of Education.

213 2].8.1.2 Documentation shall accompany each application describing the nature and severity of the child's disabling condition(s).

213 2].8.1.3 Such documentation shall include report(s) of the appropriate specialist(s), depending upon the nature of the child's disability.

213 2].8.1.4 Additional documentation will be requested, if needed, in order to make a recommendation as to the child's eligibility for private placement or the appropriateness of the requested placement.

213 2].9 Responsibility for Individualized Education Program

213 2].9.1 The district or any other public agency shall develop the initial Individualized Education Program for each child with a disability referred for approval for placement that is in a private school or facility.

213 2].9.2 The district or other public agency shall ensure that a representative of the private school or facility attends the meeting. If a representative of the private school cannot attend the meeting, the district shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

213 2].9.3 After a child with a disability enters a private school or facility; any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the district or any other public agency.

213 2].9.4 If the private school or facility initiates

and conducts these meetings, the district or any other public agency shall ensure that the parents and a district or any other public agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the program before those changes are implemented.

24 3].9.5 District of Residence: The referring district and fiscal agency for a child in private placement is the child's district of residence.

24 3].9.6 Responsibility for Compliance: Primary responsibility for compliance with State and federal regulations shall remain with the school district or other public agency responsible for the education of the child, even if a private school or facility implements a child's IEP.

24 3].10 State Responsibility for Private School Accountability: In implementing State and federal regulations governing accountability for and to private programs, the Department of Education shall have the authority to:

24 3].10.1 Monitor compliance through procedures such as written reports, on-site visits and parent questionnaires.

24 3].10.2 Develop regulations that define the standards by which private schools and facilities may be approved to serve children with disabilities, and a schedule for reevaluation.

24 3].10.3 Disseminate copies of applicable standards to each private program to which a public agency has referred or placed a child with disability.

24 3].10.4 Provide an opportunity for those private schools or facilities to participate in the development and revision of State standards which apply to them.

24 3].0 General Supervision of Education for Children with Disabilities: The Department of Education (DOE) shall ensure that each educational program for children with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and meets education standards of the State educational agency.

24 3].1 Documentation of DOE activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:

24 3].1.1 General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination; and Finance/Administration.

24 3].2 The DOE shall, through its Comprehensive Compliance Monitoring System, ensure that each public

agency develops and implements an IEP for each of its children with disabilities.

24 3].3 The DOE shall distribute regulations, sample documents and letters of notification to all agencies (public and non-public) providing services to children with disabilities.

24 3].4 Nothing in the Individuals with Disabilities Education Act, as amended, [or in these regulations] shall be construed by any party as permitting any agency of the State to reduce medical or other assistance under, or alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.

24 3].5 Compliance Monitoring: The DOE shall [fulfill ~~carry out~~] a minimum of six administrative responsibilities regarding monitoring of programs for children with disabilities. These responsibilities are:

24 3].5.1 Adoption and use of policies and procedures to exercise general supervision over all educational programs for children with disabilities within the State.

24 3].5.2 Adoption and use of a method to continuously collect and analyze information sufficient to determine compliance of sub-grantees and other agencies providing services to children with disabilities within the State, and agencies providing services to Delaware children with disabilities in other states, with applicable State and federal program operation requirements.

24 3].5.3 Adoption and use of a method by which the DOE formally directs that each deficiency identified in program operations be corrected by the appropriate agency.

24 3].5.4 Adoption and use of a method by which the DOE enforces State and federal legal obligations by [requiring written assurances of compliance with such obligations as a condition of a grant or contract; and imposition of appropriate sanctions when a public agency fails or refuses to correct a deficiency. ~~imposing appropriate sanctions when a public agency fails or refuses to correct a deficiency.~~] If, after giving reasonable notice and an opportunity for a hearing, the DOE determines that a local school district or other public agency has failed to comply with any requirement in the *Administrative Manual for Special Education Services*, the DOE shall:

24 3].5.4.1 Make no further payments to the district or agency until the DOE is satisfied that there is no longer any failure to comply with the requirement; or

24 3].5.4.2 Consider its decision in its review of any application made by the district or agency for IDEA-B payments;

24 3].5.4.3 Or both.

24 3].5.5 Any school district or other public agency receiving a notice from the Department of Education

under 24 3].5.4 is subject to public notice provisions as required under 34 CFR 300.196.

24 3].5.6 If, through its regular monitoring procedures, complaints, hearing results or other sources of information, there is evidence that the district or agency is making special education placements that are inconsistent with 34 CFR 300.550 (Least Restrictive Environment) or federal regulations, the Department of Education shall review the district or agency's justification for its action and shall assist the district or agency in planning and implementing any necessary corrective action.

24 3].6 Scope of Department of Education Compliant Monitoring Authority

24 3].6.1 The Department of Education, acting on behalf of the State Board of Education, shall have the authority to conduct monitoring, including collection and use of both off-site and on-site information.

24 3].6.2 The State Secretary of Education shall have the authority to compel the correction of deficiencies identified in program operations.

24 3].6.3 The State Secretary of Education shall have the authority to enforce legal obligations.

24 3].6.4 Department of Education standards relative to special education and related services shall be applicable to, and binding upon, all education programs for children [with disabilities ~~who are disabled~~] administered within the State.

24 3].7The Department of Education Methods of Monitoring shall include:

24 3].7.1 Written monitoring procedures which cover all aspects of State and federal requirements and which are uniformly applied to all public agencies;

24 3].7.2 Identification of deficiencies in program operations by collecting, analyzing, and verifying information sufficient to make determinations of compliance/non-compliance with State and federal requirements;

24 3].7.3 Determination of whether or not each educational program for children with disabilities administered within the State, including private schools in which these children are placed by public agencies, meets educational standards of the Department of Education, the requirements of IDEA, Part B, and where applicable, of Educational General Administrative Requirements (EDGAR).

24 3].7.4 Use of other information provided to the Department of Education through complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted documents to determine if agencies and programs are in need of specific compliance interventions;

24 3].7.5 Monitoring the implementation of any compliance agreement and the investigation of the implementation of any orders resulting from the resolution

of complaints filed with the Department of Education against the agency being monitored;

24 3].7.6 Use of off-site review, on-site review, letters of inquiry, and follow-up or verification of specific activities;

24 3].7.7 Written documentation of each monitoring activity through correspondence and reports;

24 3].7.8 Specification of a reasonable period of time to complete the analysis of information collected for monitoring or evaluation purposes to identify deficiencies of a program or public agency in meeting State and federal requirements and report such deficiencies to the public agency; and, where applicable, of Educational General Administrative requirements (EDGAR);

24 3].7.9 Specification of a reasonable period of time for reaching a determination that a deficiency in program operations exists, and for notifying the agency in writing if required;

24 3].7.10 Requirement of a written notice (for example, monitoring report, letter of findings) that:

24 3].7.10.1 Describes each corrective action which must be taken, including a reasonable time frame for submission of a corrective action plan;

24 3].7.10.2 Requires that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency must take to remedy the identified areas of non-compliance.

24 3].7.11 Specification of a reasonable period of time after receiving a corrective action plan from an agency in which the Department of Education shall determine whether the corrective action plan meets each of the requirements or if additional information is required from the agency;

24 3].7.12 Specification of a reasonable period of time from the date of the original written notice, in which the Department of Education shall determine that:

24 3].7.12.1 The agency has submitted an acceptable corrective action plan which complies fully with all of the requirements; or

24 3].7.12.2 Reasonable efforts have not resulted in voluntary compliance.

24 3].7.13 That a school district or other public agency be given reasonable notice and an opportunity for a hearing with respect to an identified deficiency.

24 3].7.13.1 If the school district or other public agency declines a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within ten (10) days.

24 3].7.13.2 If the Department of Education conducts a hearing, the Department of Education shall reach

a final decision of compliance or non-compliance within thirty (30) days after the conclusion of the hearing; or

24 3].7.13.3 If the Department of Education reaches a final decision of non-compliance (i.e., the school district or other public agency has violated State or federal requirements); the Department of Education shall:

24 3].7.13.3.1 Make no further payments under Part B to the school district or other public agency until the school district or other public agency submits an acceptable corrective action plan;

24 3].7.13.3.2 Disapprove any pending school district or other public agency Part B local application, when appropriate;

24 3].7.13.3.3 Seek recovery of funds, and impose any other sanctions authorized by law.

24 3].8 Comprehensive System of Personnel Development: The Department of Education shall provide opportunities for all public and private institutions of higher education, and other agencies and organizations, including representatives of individuals with disabilities, parent, and other advocacy organizations in the State which have an interest in the education of children with disabilities, to participate fully in the development, review, and annual updating of the Comprehensive System of Personnel Development.

24 3].8.1 The Department of Education shall conduct an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State, and to determine the training needs of personnel relative to the implementation of federal and State requirements for programs for children with disabilities.

24 3].8.2 The results of the annual needs assessment shall be used in planning and providing personnel development programs.

24 3].8.3The Department of Education shall implement a Comprehensive System of Personnel Development which includes:

24 3].8.3.1 The inservice and preservice training of general and special education instruction, related services, and support personnel. Such training shall include training and technical assistance for ensuring that teachers and administrators in all public agencies are fully informed of their responsibilities in implementing the least restrictive environment requirements and other requirements for special education and related services;

24 3].8.3.2 Procedures to ensure that all personnel necessary to carry out the provision of special education and related services are qualified and that activities sufficient to carry out the personnel development plan are scheduled;

24 3].8.3.3 Procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar

projects, and for adopting, where appropriate, promising educational practices and materials.

24 3].8.4 On-going inservice training programs shall be available to all personnel who are engaged in the education of children with disabilities.

24 3].8.4.1 These programs shall include: (1) use of incentives which ensure participation by teachers, such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, new instructional materials, and/or updating professional skills; (2) involvement of local staff; and (3) use of innovative practices which have been found to be effective.

24 3].8.5 The Department of Education shall coordinate and facilitate efforts among the Department of Education, districts and agencies, including institutions of higher education and professional associations, to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

24 3].8.6 The Department of Education shall coordinate with each district, agency and/or institution of higher education all responsibilities relative to the gathering of data, training, recruitment and retention as delineated in 34 CFR 300.380.

24 3].8.7 The Department of Education shall disseminate copies of statutes, regulations, and standards applicable to programs for children with disabilities to each local education agency, institution, ~~the GACEC~~ and ~~for~~ organization responsible for carrying out the programs.

24 3].8.7.1 Such dissemination includes each private school and facility to which a public agency has referred a child with a disability.

24 3].8.7.2 The Department of Education shall disseminate information on significant knowledge derived from educational research and other sources, promising practices, materials, and technology, proven effective through research and demonstration which may be of assistance to LEAs and other agencies in the improvement of education and related services for children with disabilities.

24 3].8.7.3 The Department of Education shall be responsible for the following dissemination activities:

24 3].8.7.3.1 Notice of any changes in statutes, regulations, or standards applicable to programs for children with disabilities shall be issued in writing, with copies to the head of each school district or other public agency, to each supervisor of programs for children with disabilities and to institutions of higher education;

24 3].8.7.3.2 Regular meetings, at least quarterly, of LEA and other agency supervisors of special education programs;

24 3].8.7.3.3 Learning Resource System publications relative to current issues and promising practices.

24 3]9 Finance/Administration

24 3]9.1 Child Count Procedures: The Department of Education shall specify in writing the procedures and forms used to conduct the annual count of children served. Such procedures and forms shall conform to 34 CFR 300.750 through 300.755 and written instructions received from the Office of Special Education and Rehabilitative Services (OSERS).

24 3]9.2 Administration of Funds: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the *Delaware Code*.

24 3]9.3 Review of LEA Application: The Department of Education shall develop and use a review sheet to document that all required IDEA-B, EDGAR, and State statutes and regulations have been applied to the review and approval of each LEA Application.

24 3]9.3.1 Each LEA shall be notified in writing, using a standard format of the status of its Application, i.e., approved, not approved, and any conditions which must be met in order for the Application to be approved.

24 3]9.3.2 All amendments to an LEA Application shall be reviewed and approved using the same requirements and procedures used for an initial Application.

24 3]9.3.3 In the event that the Department of Education and the LEA cannot negotiate and effect an approved LEA Application, the Department of Education shall notify the LEA in writing of its right to a hearing and the procedures for obtaining a hearing.

24 3]9.3.4 If, after a hearing, the district or agency application is found to be unapprovable, the district or agency may appeal this finding to the Secretary, U. S. Department of Education. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the Department of Education of the results of the hearing.

24 3]9.3.5 The State shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

24 3]9.3.6 An applicant from a district or agency shall include the following information:

24 3]9.3.6.1 A description of how the applicant will meet the federal requirements for participation of children enrolled in private schools.

24 3]9.3.6.2 The numbers of children enrolled in private schools which have been identified as eligible for benefits under the program.

24 3]9.3.6.3 The basis the applicant used to select the children.

24 3]9.3.6.4 The manner and extent to which the applicant complied with [Education Department General Administrative Regulations (EDGAR, January

1, 1996, USDE). ~~Section 76.652 (consultation).~~

24 3]9.3.6.5 The places and times the children will receive benefits under the program.

24 3]9.3.6.6 The difference, if any, between the program benefits the applicant will provide to public and private school children, and the reasons for the differences.

24 3]9.4 Recovery of Funds for Misclassified Children: A State audit shall be conducted during the month of October to ascertain that units awarded on September 30 are in full operation on or prior to that date with evidence of services being provided. If, during the audit of State units for the education of children with disabilities, it is discovered that a child has been erroneously classified, this discrepancy will be made known to the local education agency and will also be reported to the proper persons at the Department of Education.

24 3]9.4.1 The specific procedures used in order to authenticate the count of children will be found in the *Monitor's Handbook for the September Audit and Site Monitoring*.

24 3]9.4.2 The local education agency will be notified that its Part B grant award has been reduced by an amount equal to that fiscal year's per child allocation ~~of \$558,000~~ ~~the LEA grant would be reduced at a rate of \$558,001~~ for each child determined to have been misclassified.

24 3]9.4.3 Should discovery of misclassification occur at a time other than during the audit of State units, such as in the fourth quarter of the Grant, the following year's Grant Award shall be reduced accordingly. The task of identifying children who have been misclassified shall not only during the September 30 audit of State units, but during all other IDEA monitoring and evaluation on-site visits as well.

24 3]10 Other SEA Responsibilities

24 3]10.1 Ensure Adequate Evaluation: As a means of ensuring adequate evaluation of the effectiveness of the policies and procedures relative to child identification shall:

24 3]10.1.1 Incorporate within its [Comprehensive Compliance Monitoring System ~~CCMS~~] process a series of questions about the Childfind activities which will be asked of special and regular education teachers, administrators, related services personnel, Part H personnel and other public agencies;

24 3]10.1.2 Systematically review each LEA's application for federal funds to ensure that it contains a complete description of the LEA's child identification process;

24 3]10.1.3 Annually review the child count data to determine trends and anomalies in the types and numbers of children identified.

215 4]0 Funding Issues for Children with Disabilities

215 4]1 Reimbursement under the Unit System: Eligibility of the local education agencies to receive reimbursement under the unit system is contingent upon:

215 4]1.1 The proper identification of children with disabilities in accordance with Title 14 of the *Delaware Code* and Sections 2.0, 3.0, and 4.0 of these regulations; and

215 4]1.2 A State Department of Education audit to document the child count for units awarded on September 30, and to document the availability of current and complete IEPs for children included in the count.

215 4]2Aide[s] Positions for Services to Children with Disabilities (as authorized under 14 *Del. C.*, Section 1324).

215 4]2.1 All paraprofessionals in such positions shall work under the supervision of teachers.

215 4]2.2 The following positions may be authorized:

215 4]2.2.1 Trainable Mental Disability Unit: One classroom teacher, or in lieu of a teacher, two aides may be employed, as long as the number of aides does not exceed the number of teachers in any given special school. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

215 4]2.2.2 Severe Mental Disability Unit: One classroom teacher and one classroom aide may be employed per unit in any given special school. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

215 4]2.2.3 Autism Unit: One teacher and one aide may be employed per unit. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

215 4]2.2.4 Physical Impairment Unit: One classroom teacher and either one aide or attendant may be employed per unit in any given special school.

215 4]2.2.5 Hearing Impairment Unit: One classroom teacher and one aide per primary unit, one classroom teacher and one aide for other units (grades 4-12), and one clerk-aide for the parent-child program may be employed in any given special school.

215 4]2.2.6 Deaf/Blindness Unit: One classroom teacher and one classroom aide may be employed per unit. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred and twenty-two (222) days.

215 4]2.2.7 Intensive Learning Center Unit: One classroom teacher, or in lieu of a teacher, two aides, may be employed as long as the number of aides does not

exceed the number of teachers in any center, and that all aides work under the direct supervision of teachers.

215 4]2.3 The use and ratio of aides to teachers shall be dependent upon the rationale developed by the agency.

215 4]3 School Nurses (as authorized by 14 *Del. C.*, Section 1310)

215 4]3.1 A nurse shall be employed for eight (8) or more units of children with autism, physical impairment, trainable mental disability, severe mental disability, or a combination thereof, and for hearing impairment as per regular district formula, i.e., 40:1. Such units shall be subtracted from the district's total units so that they are not counted twice.

215 4]4 Other Positions for Services to Children with Disabilities

215 4]4.1 Any special school with an enrollment of ten (10) or more units may employ a secretary (12 months) and proportional secretarial services for less than 10 units. Such units must be subtracted from the district's total units so that they are not counted twice.

215 4]4.2 Custodial services shall be provided upon the regular custodial formula with consideration given for residence hall care.

215 4]4.3 An instructional media specialist shall be assigned to the school for the hearing impaired when there is a minimum of ten (10) units.

215 4]4.4 A budget item shall be provided for contractual services in order to give to a school for hearing impaired the appropriate services in such fields as, but not limited to, speech pathology, school psychology, social work, and guidance counseling.

215 4]4.5 Whenever the State Board of Education designates a particular school district to serve as administrator for the statewide program for deaf/blind pupils, that district may employ as a statewide coordinator at the principal's rank and salary, a principal for eight (8) or more such units of deaf/blind children. If a principal is assigned responsibility for such a program for fewer than eight (8) units, the support for the assignment shall be in the same ratio as the number of authorized units is to eight (8) units.

25.0 Advisory Council for Exceptional Citizens. The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by PL 94-142 (20 U.S.C. Section 1400 et seq.). (14 *Del. C.* 195, Section 3108; 51 *Del. Laws. C.* 287, Section 3; 61 *Del. Laws.* 190, Section 7; 71 *Del. Laws.* c. 180, Section 147.)

25.1 An annual report prepared by the Governor's

Advisory Council for Exceptional Citizens shall be made available to the public in a manner consistent with other public reporting requirements.

25.1.1 The annual report shall be reviewed by the Department of Education and the Department's response shall be sent to the Governor's Advisory Council.

25.2 All Advisory Panel meetings and agenda items shall be publicly announced prior to the meeting, and meetings must be open to the public.

25.3 The State shall reimburse the Panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use Part B funds for this purpose.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority 31 Delaware Code,
Section 512 (31 Del.C. 512)

In the Matter Of:

Revision of the Regulations
Of the Medicaid/medical
Assistance Program

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to the General Policy Provider Manual. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the April, 2000 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2000 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact:

The Department finds that the proposed changes as set forth in the April, 2000 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed

regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective June 10, 2000.

Gregg C. Sylvester, M.D., Secretary
May 10, 2000

Delaware Prescription Assistance Program (DPAP)

The Delaware Prescription Assistance Program (DPAP) provides payment assistance for prescription drugs to Delaware's low-income senior and disabled citizens who are ineligible for, or do not have, prescription drug benefits or coverage through federal, state, or private sources. The program is administered by the fiscal agent under contract with the State.

To be eligible for this program a person must:

- Be a U.S. citizen or a lawfully admitted alien;
- Have income that is less than 200% of the Federal Poverty Level (FPL) or have prescription drug expenses that exceed 40% of his or her annual income;
- Be a resident of the State of Delaware;
- Be ineligible for Medicaid prescription benefits;
- Be ineligible for Nemours Health Clinic Pharmaceutical benefit;
- Be ineligible for and/or not receiving a prescription drug benefit through a Medicare supplemental policy or any other third party payer prescription benefit; and
- Be an individual aged 65 or over or be an individual between the ages 19 and 64 who is otherwise eligible for receiving disability (Social Security Disability Insurance) benefits under Title II of the Social Security Act.

Prescription drugs covered under the program are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing DMAP limitations. Services covered are include generic and brand name FDA-approved and other legal prescription drugs, as well as cost effective over-the-counter drugs prescribed by a physician practitioner. Necessary diabetic supplies not covered by Medicare will also be covered. Medications that are covered by Medicare are not covered by this program.

Payment assistance shall not exceed \$2,500 per State fiscal year to assist each eligible person in the purchase of prescription drugs. There will be a co-payment of \$5 or 25% of the cost of the prescription whichever is greater. The pharmacy will collect the co-payment before the prescription is dispensed. Copayments may be waived in case of good cause. Clients may request that their copayments be waived if they have experienced a catastrophic situation resulting in unexpected, extraordinary expenses related to loss or

significant damage to shelter or the well being of themselves or their immediate family. The request must be in writing and explain the circumstances that led to the request. Verification will be required in the form of collateral contacts such as repair bills, police or insurance reports, etc. The DPAP team will notify the client if good cause is granted. Copayments will be waived for the remainder of the fiscal year.

Eligibility Confirmation

It is the provider's responsibility to verify a recipient's current eligibility each time a service is provided. The provider should request that the recipient show a current Medical Assistance card, establishing identity and dates of eligibility.

Pharmacy providers should refer to the Billing Instructions/POS Transactions section of the Pharmacy Manual, which outlines recipient eligibility confirmation via the authorization number for POS/DUR.

Assistance regarding eligibility information, restricted/hospice/managed care/Qualified Medicare Beneficiary coverage's, and third party liability information may be obtained by the provider by accessing the ~~CONFIRM~~ Automated Voice Response system. Refer to the ~~CONFIRM~~ Automated Voice Response section of this manual for more detail.

~~Note: Eligibility information regarding the Delaware Healthy Children Program cannot be obtained by accessing the CONFIRM system.~~

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))

Secretary's Order No.: 2000-F-0025

Date of Issuance: May 10, 2000

I. Background

The Department of Natural Resources and Environmental Control, Division of Fish and Wildlife ("Department") initiated proceedings to amend the Wildlife and Non-Tidal Fishing Regulations. The Department's proceedings were initiated pursuant to 29 **Del.C.** § 10114

and its authority as prescribed by 7 **Del.C.** §§ 103 and 601.

On December 1, 1999, the Department published in the Delaware Register of Regulations (pp. 742-749) its notice of proposed regulation changes pursuant to 29 **Del.C.** § 10115. The notice requested that written comments from the public concerning the proposed amendments be delivered to the Department by January 25, 2000, or that comments be presented in writing or orally at a public hearing on January 11, 2000.

After the close of the public comment period, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated May 8, 2000, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

1) On October 26, 1999, presentations were made before the Council on Game and Fish on possible regulation changes regarding endangered species and smallmouth bass.

2) On November 9, 1999, a public workshop concerning possible regulation changes regarding smallmouth bass was held at the Brandywine Creek State Park Nature Center.

3) Proper notice of the public hearing held on January 11, 2000, was provided as required by law.

4) All of the findings and conclusions contained in the Hearing Officer's Report, dated April 12, 2000, are expressly incorporated herein.

5) The proposed amendments include modifications from those published in the Delaware Register of Regulations on December 1, 1999, based on comments received during the public notice period.

6) The changes made to the proposal after it was published in the Delaware Register of Regulations do not constitute substantive changes with respect to republishing this regulatory proposal.

7) The proposed amendments should be made in the best interest of the general public of the State of Delaware.

III. Order

In view of the findings and conclusions, it is hereby ordered that the proposed amendments to the Wildlife and Non-Tidal Fishing Regulations be adopted in the manner and form provided for by law. This order shall become effective on June 12, 2000.

Nicholas A. DiPasquale
Secretary

WR-1. DEFINITIONS.

For purposes of WR-2 through ~~WR-15~~ WR-16 and NT-1 through NT-8, the following words and phrases shall have

the meaning ascribed to them, unless the context clearly indicates otherwise:

(1) "Administered by the Division" shall mean owned, leased or licensed by the Division.

(2) "Antlered deer" shall mean any deer with one or more antlers three inches long or longer, measured from the base of the antler where it joins the skull to the tip of the antler following any curve of the antler.

(3) "Antlerless deer" shall mean any deer that has no antlers or antlers less than three inches in length.

(4) "Bait" shall mean any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

(5) "Baited field" shall include any farm field, woodland, marsh, water body or other tract of land where minerals, grain, fruit, crop or other nontoxic compounds have been placed to attract wildlife to be hunted.

(6) "Designated trout stream" shall mean:

a. Christina Creek, from the boundary line between this State and the State of Maryland through Rittenhouse Park;

b. White Clay Creek, from the boundary line between this State and the Commonwealth of Pennsylvania to the downstream side of Paper Mill Road;

c. Pike Creek, from Route 72 to Henderson Road;

d. Mill Creek, from Brackenville Road to Route 7;

e. Wilson Run, from Route 92 through Brandywine Creek State Park; and

f. Beaver Run, from the boundary line between this State and the Commonwealth of Pennsylvania to the Brandywine River.

(7) "Director" shall mean the Director or Acting Director of the Division.

(8) "Division" shall mean the Division of Fish and Wildlife of the Department.

~~(9) "Endangered species" shall mean any species of fish or wildlife designated by regulation of the Department as being in danger of extinction throughout all or a significant portion of its range, or determined by the Secretary of Commerce or the Secretary of the Interior to be an endangered species in accordance with the Endangered Species Act of 1973, as amended.~~

~~(9)(10) "Established blind" shall mean a structure or pit constructed for the purpose of hunting migratory waterfowl by a landowner on his or her property or by another person with the permission of the landowner or the landowner's duly authorized agent.~~

~~(10)(11) "Established road" shall mean a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.~~

~~(11)(12) "Fishing" or "to fish" shall mean to take, catch, kill or reduce to possession or attempt to take, catch, kill or reduce to possession any fish by any means whatsoever.~~

~~(12)(13) "Game fish" shall include smallmouth bass,~~

largemouth bass, black or white crappie, rock bass, white bass, walleye, northern pike, chain pickerel, muskellunge (or hybrids), salmon, trout, sunfishes and white bass/striped bass hybrids.

~~(13)(14) "Liberated game" shall mean cottontail rabbits and game birds, including bobwhite quail, mallard duck, chukar and pheasant, released pursuant to § 568 of Title 7.~~

~~(14)(15) "Loaded muzzle-loading rifle" shall mean the powder and ball, bullet or shot is loaded in the bore. A muzzle-loading rifle shall not be considered loaded if the cap, primer, or priming powder (in a flintlock) is removed and:~~

a. The striking mechanism used to ignite the cap, primer or priming powder is removed or rendered inoperable; or

b. The rifle is enclosed in a case.

~~(15)(16) "Lure" shall mean any mixture of ingredients, element or compound that attract wildlife, but the wildlife is unlikely to consume.~~

~~(16)(17) "Longbow" shall mean a straight limb, reflex, recurve or compound bow. All crossbows or variations thereof and mechanical holding and releasing devices are expressly excluded from the definition.~~

~~(17)(18) "Nongame wildlife" shall mean any native wildlife, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit. "Native wildlife" shall mean any species of the animal kingdom indigenous to this State.~~

~~(18)(19) "Possession" shall mean either actual or constructive possession of or any control over the object referred to.~~

~~(19)(20) "Refuge" shall mean an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.~~

~~(20)(21) "Restricted trout stream" shall mean the White Clay Creek from a point 25 yards above Thompson Bridge at Chambers Rock Road to the boundary line between this State and the Commonwealth of Pennsylvania.~~

~~(21)(22) "Roadway" shall mean any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.~~

~~(22)(23) "Season" shall mean that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.~~

~~(23)(24) "Wildlife" shall mean any member of the animal kingdom, including without limitation, any amphibian, arthropod, bird, mammal or reptile.~~

~~(24)(25) "Vehicle" shall include any means in or by~~

which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

WR-4. SEASONS.

Section 1. Season Dates.

~~[Specific dates for hunting seasons~~ **Hunting and trapping season dates**] will be published ~~[officially]~~ each year in an annual publication entitled ~~[the]~~ "Delaware Hunting and Trapping Guide."

Section 2. General.

It shall be unlawful for any person to hunt those species of wildlife for which a season is designated at any time other than during that season.

Section 3. Protected Wildlife.

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt any species of protected wildlife.

(b) It shall be unlawful for any person to sell, transport or possess any species of protected wildlife, except when:

- (1) Otherwise provided by law or regulation of the Department; or
- (2) The wildlife was lawfully taken outside of this State in accordance with the laws or regulations of the state or nation where the wildlife was taken.

Section 4. Beaver.

(a) Unless otherwise ~~[authorized provided]~~ by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight ~~[(8)]~~ beavers from their property without a permit, provided:

- (1) Beavers are damaging crops or other property;
- (2) The property damage is certified by the landowner; and
- (3) The number of beavers taken is reported to the Division by April 1.

(b) Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

Section 5. Bullfrogs.

(a) *Season.* – Bullfrogs ~~[(*Rana catesbiana*)]~~ may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: from May 1 through September 30.

(b) *Limit.* – It shall be unlawful for any person to take more than twenty-four (24) bullfrogs in any one day.

(c) *License.* – A hunting or fishing license is required to take bullfrogs.

Section 6. Crows.

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March, unless said person holds a valid depredation permit. The hunting of ~~[erow common crows]~~ is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

Section 7. Gray Squirrel.

(a) *Season.* – Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in November; and from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season. Squirrel hunting shall be unlawful during any period and in any area when it is lawful to hunt deer with a firearm.

(b) *Limit.* – It shall be unlawful for any person to take more than four ~~[(4)]~~ gray squirrels in any one day.

Section 8. Opossum.

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

Section 9. Pheasant.

(a) *Season.* – Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season, except that no pheasant hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, pheasant may be hunted during the December firearm deer season when hunter orange is displayed in accordance with § 718 of Title 7.

(b) *Female Pheasant.* – It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on licensed ~~[shooting game]~~ preserves, by licensed game breeders or as otherwise permitted by law.

(c) *Male Pheasant Limit.* – It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

(d) *Scientific or Propagating Purposes.* – It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit from the Director.

(e) ~~[Shooting Game] Preserves.~~ – Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on ~~[restricted experimental, propagating and shooting~~

licensed game] preserves.

Section 10. Quail.

(a) *Season.* – Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of February, except that no quail hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, quail may be hunted during the December or January firearm deer seasons when hunter orange is displayed in accordance with § 718 of Title 7.

(b) *Limit.* – It shall be unlawful for any person to take more than six **[(6)]** quail in any one day.

Section 11. Rabbit.

(a) *Season.* – Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through the first Saturday in February, except that no rabbit hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, rabbit may be hunted during the December or January firearm deer seasons when hunter orange is displayed in accordance with § 718 of Title 7.

(b) *Limit.* – It shall be unlawful for any person to take more than four **[(4)]** rabbits in any one day.

Section 12. Raccoon.

(a) *Trapping Season.* – Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.

(b) *Hunting Season.* – Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.

(c) Notwithstanding subsection (b) of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a

firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

Section 13. Red Fox.

Red fox may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from October 1 through April 30 for chase only whereby it shall be unlawful to kill red fox, except no red fox hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.

Section 14. Ruffed Grouse.

It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

Section 15. Snapping Turtles.

(a) *Season.* – It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

(b) *Size.* – It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a carapace length of less than eight **[(8)]** inches, measured on the curvature.

Section 16. Terrapin.

(a) *Season.* – It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including ~~July 15 and October 1~~ September 1 and November 15.

(b) *Limit.* – It shall be unlawful for any person to take more than four **[(4)]** diamondback terrapin in any one day.

WR-6. ~~RESTRICTED EXPERIMENTAL, PROPAGATING AND SHOOTING GAME PRESERVES.~~

It shall be unlawful for any person to hunt liberated game on ~~restricted~~ **[licensed]** game preserves from April 1 through October 14.

WR-14. FALCONRY.

Section 1. Federal Regulations Adopted.

It shall be unlawful for any person to practice the sport of falconry, except in such a manner as prescribed by regulations promulgated under provisions of 50 CFR (Code of Federal Regulations) §§ 21.28, 21.29 and 21.30. Such regulations are hereby made part of the regulations of the Department as prescribed in § 725 of Title 7. Notwithstanding the foregoing, the federal regulations governing falconry shall be superseded by more stringent

restrictions prescribed by law or regulation of the Department.

Section 2. Permits.

(a) Residents wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person shall successfully pass a written test and have their facilities and equipment inspected as prescribed by the federal regulations.

(b) Nonresidents wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person must purchase a nonresident hunting license and be properly permitted to practice falconry in the state in which he or she resides.

(c) Falconry permits shall be effective, unless revoked, for a period of up to three years and coincide with the license period for the hunting license. The Division shall participate in any joint state/federal permit system available.

(d) The issuance of Apprentice Class permits shall be limited to persons 15 years of age or older.

Section 3. Taking of Raptors.

(a) It shall be unlawful for any person to take any birds of prey from the wild without a permit from the Division. The Director shall establish a limit on the number of raptors which may be taken each year and appear before the Council on Game and Fish to receive input on such limit before its adoption.

(b) In 1999 2000, ~~[and each year thereafter until changed,]~~ the Division ~~[shall consider the issuance of no more than may issue up to]~~ twelve (12) permits for ~~[the]~~ taking ~~[of twelve (12)]~~ birds of prey from the wild in Delaware, except that ~~[no more than three (3)]~~ permits ~~[shall be issued]~~ for ~~[no more than three (3) the taking of three (3) nestling red-tailed hawks or [three (3) nestling] great horned owls [shall be issued, or any combination thereof].~~ Nonresident falconers may apply for available permits to take nestling raptors, provided the state in which the nonresident resides allows Delaware residents the reciprocal opportunity to remove nestling raptors.

(c) The taking of nestling (eyas) birds shall be limited to red-tailed hawks and great horned owls on Thursdays, Fridays and Saturdays from March 18 through June 30.

(d) The season for the taking of passage birds shall be from September 1 through January 12. Nonresident falconers may apply to obtain any available permits to take passage raptors in Delaware, provided the state in which the nonresident resides has a reciprocal arrangement that permits Delaware residents to take passage raptors.

(e) It shall be unlawful to remove raptors from private property without the express consent of the landowner. It shall also be unlawful for any person to remove raptors from State parks, State forests, State wildlife areas, State owned wetland mitigation sites, national wildlife refuges, nature

preserves, natural areas, and county or local parks without the advance approval of the agency administering the property. The permit to remove a raptor from the wild must be in possession of the falconer when attempting to capture a raptor. Apprentice falconers must be under the direct supervision of their sponsor or a Master or General class falconer when removing raptors from the wild.

(f) Raptors taken from the wild in Delaware may not be sold or bartered.

Section 4. Hunting.

Falconry shall be a legal method of take for all game birds and game animals in Delaware. The hunting season for resident game shall be from September 1 through February 28. A permit holder whose raptor accidentally kills wildlife during a closed season for such wildlife shall leave the dead wildlife where it lies, except the raptor may feed upon the wildlife before leaving the site of the kill, provided that the wildlife shall not be reduced to possession by the falconer and the falconer shall cease hunting with the raptor that makes the accidental kill for the remainder of the day.

Section 5. Marking.

Any raptor possessed under a Delaware falconry permit must be banded with a permanent, non-reusable numbered band issued by the U.S. Fish and Wildlife Service or the Division. Captive reared raptors may be marked with either a permanent, non-reusable numbered band or, if sold, a numbered seamless band. Markers shall be removed from birds that die or are intentionally released into the wild and must be forwarded to the Division within ten days along with a report that documents the fate of the bird.

Section 6. Release.

Raptors, including hybrid raptors, which are not indigenous to Delaware shall not be permanently released into the wild. Raptors released in Delaware must be released within the appropriate season in which that species naturally occurs within the State.

WR-15. COLLECTION OR SALE OF NONGAME NATIVE WILDLIFE.

Section 1. Commercial Collection.

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to collect or possess collect, possess, import, cause to be imported, export, cause to be exported, buy, sell or offer for sale any North American nongame native wildlife species or any part thereof for commercial purposes without a permit from the Director. The permit shall limit the terms and conditions for collecting or possessing said wildlife within the State. Endangered species or a species classified as a threatened species in accordance with the Endangered Species Act of

1973, as amended may not be collected, possessed or sold without appropriate federal/state permits. Species that are exotic to Delaware and regulated by the Delaware Department of Agriculture shall be exempt from the provisions of this section.

(b) Notwithstanding subsection (a) of this section, native wildlife species may be possessed, imported, sold or offered for sale for commercial purposes without a permit from the Director if there is written documentation to confirm that said wildlife was legally taken in and transported from another state.

Section 2. Collection and Possession of Reptiles and Amphibians.

(a) Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to remove from the wild or possess any native reptile or amphibian species, their eggs or parts without a permit from the Director.

(b) ~~For noncommercial purposes~~ Notwithstanding subsection (a) of this section, one individual of each of the following any single species [or subspecies] of reptiles and amphibians, other than State Heritage Program ranked S1, S2, S3, SX or SH, may be collected and possessed without a permit:

Reptiles

- Lizard, Northern Fence [(Sceloporus undulatus hyacinthinus)]
- Racer, [Northern Black (Coluber constrictor constrictor)]
- Skink, Five-lined [(Eumeces fasciatus)]
- Snake, Black Rat [(Elaphe obsoleta obsoleta)]
- Snake, [Common Eastern] Garter [(Thamnophis sirtalis sirtalis)]
- Snake, Eastern Hognose [(Heterodon platirhinos)]
- Snake, [Eastern] Worm [(Carphophis amoenus amoenus)]
- Snake, Northern Water [(Nerodia sipedon sipedon)]
- Snake, Ringneck [(Diadophis punctatus)]
- Terrapin, Diamondback [(Malaclemys terrapin)]
- Turtle, Common Musk [(Sternotherus odoratus)]
- Turtle, Eastern Box [(Terrapene carolina carolina)]
- Turtle, Eastern Mud [(Kinosternon subrubrum subrubrum)]
- Turtle, Painted [(Chrysemys picta)]
- Turtle, Redbelly [(Pseudemys rubriventris)]
- Turtle, Snapping [(Chelydra serpentina)]

Amphibians

- Bullfrog [(Rana catesbeiana)]
- Frog, Green [(Rana clamitans melanota)]
- Frog, New Jersey Chorus [(Pseudacris triseriata kalmi)]
- Frog, Northern Cricket [(Acris crepitans crepitans)]
- Frog, Pickerel [(Rana palustris)]
- Frog, Southern Leopard [(Rana utricularia)]
- Frog, Wood [(Rana sylvatica)]
- Newt, [Eastern Red-spotted (Notophthalmus viridescens viridescens)]
- Peeper, [Northern] Spring [(Pseudacris crucifer crucifer)]
- Salamander, [Northern] Dusky [(Desmognathus fuscus fuscus)]
- Salamander, Northern Two-lined [(Eurycea bislineata)]
- Salamander, Redback [(Plethodon cinereus)]
- Spadefoot, Eastern [(Scaphiopus holbrookii holbrookii)]
- Toad, American [(Bufo americanus)]
- Treefrog, Gray [(Hyla versicolor and Hyla chrysoscelis)]

~~(e) Federally listed threatened and endangered species may not be collected or possessed without federal permits.~~

~~(c)(d) It shall be unlawful to remove [any reptiles or amphibians reptile or amphibian] from the wild and later release said [animals reptile or amphibian] back to the wild if [they have it has] been held in captivity for [more than] [thirty (30) 30] days [more].~~

[(d) Notwithstanding subsection (a) of this section, native reptiles and amphibians taken from the wild and lawfully possessed prior to August 15, 1999, may continue to be held in captivity[,] provided that written notification of the numbers and species being held is given to the Division prior to December 15, 1999.

Section 3. Captive Breeding.

(a) It shall be unlawful for any person to breed in captivity any North American nongame native wildlife species without a nongame breeders permit from the Director, except for species that are regulated by the Delaware Department of Agriculture. Said permit shall limit the terms and conditions for captive breeding of said wildlife.

(b) It shall be unlawful for any person to release captive-bred species into the wild. A signed bill of sale shall accompany any captive-bred species that are sold. ~~Federally listed threatened and endangered species may not be collected or possessed without the appropriate federal permits.~~

(c) This section shall not apply to accredited zoos or to raptors regulated by federal and State falconry or raptor

propagation regulations.

[Section 4. Collections Prior to Adoption of Regulations.]

Persons owning nongame wildlife that was in their possession prior to the effective date of this regulation shall have four months to register said wildlife with the Division. **[Once registered, said wildlife may be legally possessed.]**

Section [5 4]. Sale or Possession of CITES Listed Species.

It shall be unlawful for any person to sell or possess bear gall bladder, or other viscera from any species of bear, or any part of other species listed as prohibited by the Convention on International Trade in Endangered Species (CITES). The possession of any part of a bear must be in conformance with CITES.

WR-16. ENDANGERED SPECIES.

Section 1. Importation, Transportation and Possession.

Pursuant to § 601 of Title 7, the importation, transportation, possession or sale of any endangered species of fish or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of endangered species of fish or wildlife is prohibited, except under license or permit from the Division.

Section 2. Designation of Species by Division.

(a) Pursuant to § 601 of Title 7, the Division may designate species of fish and wildlife that are seriously threatened with extinction as endangered species.

(b) For the purposes of this section, the phrase "seriously threatened with extinction" shall mean that the species satisfies one or more of the following criteria:

(1) Appears on the federal list of endangered species;

(2) Ranked as "globally rare" (G1, G2, or G3), which means 100 or fewer populations worldwide; **[or]**

(3) Is rare within the mid-Atlantic coastal plain.

(c) Based upon the criteria prescribed by subsection (b) of this section, the following species are declared endangered in this State and are afforded the protection provided by § 601 of Title 7:

Amphibians

Salamander, Eastern Tiger (*Ambystoma tigrinum tigrinum*)

Treefrog, Barking (*Hyla gratiosa*)

Birds

Creeper, Brown^{BR} (*Certhia americana*)

Eagle, Bald (*Haliaeetus leucocephalus*)

[Grebe, Pied-billed^{BR} (*Podilymbus podiceps*)]

Harrier, Northern^{BR} (*Circus cyaneus*)

Hawk, Cooper's^{BR} (*Accipiter cooperii*)

Heron, Black-Crowned Night- (*Nycticorax nycticorax*)

Heron, Yellow-Crowned Night- (*Nyctanassa violacea*)

[Parula, Northern^{BR} (*Parula americana*)]

Plover, Piping (*Charadrius melodus*)

[Owl, Short-eared^{BR} (*Asio flammeus*)]

Oystercatcher, American (*Haematopus palliatus*)

Rail, Black (*Laterallus jamaicensis*)

Sandpiper, Upland (*Bartramia longicauda*)

Shrike, Loggerhead (*Lanius ludovicianus*)

Skimmer, Black (*Rynchops niger*)

Sparrow, Henslow's (*Ammodramus henslowii*)

Tern, Common^{BR} (*Sterna hirundo*)

Tern, Forster's^{BR} (*Sterna forsteri*)

Tern, Least (*Sterna antillarum*)

Warbler, Cerulean (*Dendroica cerulea*)

Warbler, Hooded^{BR} (*Wilsonia citrina*)

Warbler, Swainson's (*Limnothlypis swainsonii*)

[Woodpecker, Red-headed (*Melanerpes erythrocephalus*)]

Wren, Sedge (*Cistothorus platensis*)

^{BR} Breeding population only

Fish

Sturgeon, Atlantic (*Acipenser oxyrhynchus*)

Insects

Beetle, Little White Tiger (*Cicindela lepida*)

Beetle, White Tiger (*Cicindela dorsalis*)

Beetle, Seth Forest Scavenger (*Hydrochus sp.*)

Elfin, Frosted (*Incisalia irus*)

Firefly, Bethany (*Photuris bethaniensis*)

Hairstreak, Hessel's (*Mitoura hesseli*)

Hairstreak, King's (*Satyrium kingi*)

Skipper, Rare (*Problema bulenta*)

Wing, Mulberry (*Poanes massasoit chermocki*)

Mammals

Squirrel, Delmarva Fox (*Sciurus niger cinereus*)

Mollusks

Lammussel, Yellow (*Lampsilis cariosa*)

Lammussel, Eastern (*Lampsilis radiata*)

Wedgemussel, Dwarf (*Alasmidonta heterodon*)

Pondmussel, Eastern (*Ligumia nasuta*)

Floater, Brook (*Alasmidonta varicosa*)

Mucket, Tidewater (*Leptodea ochracea*)

Reptiles

- Sea Turtle, Leatherback (*Dermochelys coriacea*)
- Sea Turtle, Atlantic Ridley (*Lepidochelys kempii*)
- Sea Turtle, Green (*Chelonia mydas*)
- Sea Turtle, Loggerhead (*Caretta caretta*)
- Turtle, Bog (*Clemmys muhlenbergii*)
- Snake, Corn (*Elaphe guttata guttata*)

Section 3. Federally Listed Species.

(a) Pursuant to the Endangered Species Act of 1973 (16 USC §§ 1531-1543), as amended, the Secretary of the Interior must publish in the Federal Register a list of all fish and wildlife species determined by him or her or the Secretary of Commerce to be endangered species. The federal list of endangered species is hereby adopted and all species listed thereon are hereby declared to be endangered species in the State as prescribed in § 601 of Title 7.

(b) It shall be unlawful for any person to collect, possess or sell any species of fish or wildlife listed as endangered or threatened pursuant to the Endangered Species Act of 1973, as amended, without the appropriate federal permits.

NT-2. BAG LIMITS AND SEASONS.

Section 1. Closed Seasons.

Unless otherwise ~~prescribed~~ **provided** by law or regulation of the Department, there shall be no closed season, size limits or possession limits on any species of fish taken by hook and line in any non-tidal waters of this State.

Section 2. Bass.

(a) *Statewide limits.*

(1) It shall be unlawful for any person to have in possession ~~at or between the place where taken and his or her personal abode or temporary place of lodging~~ more than six (6) largemouth and/or smallmouth bass at or between the place where said largemouth and/or smallmouth bass were caught and said person's personal abode or temporary or transient place of lodging.

(2) Unless otherwise authorized in this regulation, it shall be unlawful for any person to possess any largemouth ~~or smallmouth~~ bass that measure less than twelve (12) inches in total length. Any largemouth bass taken which is less than the twelve (12) inches in total length shall be immediately returned to the water as quickly as possible with the least possible injury.

(3) It shall be unlawful for any person to possess any smallmouth bass measuring from twelve (12) inches to and including (17) inches in total length. Any smallmouth bass taken which is greater than twelve (12) inches and less than seventeen (17) inches shall be immediately returned to the water with the least possible injury.

(4) Notwithstanding paragraph (a)(1) of this section, it shall be unlawful for any person to have in possession more than one (1) smallmouth bass measuring

more than seventeen (17) inches in total length at or between the place where said smallmouth bass was caught and said person's personal abode or temporary or transient place of lodging.

(5) It shall be lawful for any person to have in possession while fishing up to six (6) smallmouth bass that are less than twelve (12) inches in total length.

(b) *Becks Pond.*

(1) Notwithstanding paragraph (a)(1) of this section, it shall be unlawful for any person to have in possession while fishing on Becks Pond more than two (2) largemouth ~~and/or smallmouth~~ bass.

(2) Notwithstanding paragraph (a)(2) of this section, it shall be unlawful for any person to have in possession while fishing on Becks Pond any largemouth ~~or smallmouth~~ bass less than fifteen (15) inches in total length. Any largemouth ~~or smallmouth~~ bass less than fifteen (15) inches in total length shall be immediately returned to Becks Pond with the least possible injury.

(c) *Andrews Lake.*

(1) Notwithstanding paragraph (a)(1) of this section, it shall be unlawful for any person to have in possession while fishing on Andrews Lake more than one (1) largemouth bass of the six (6) allowed in possession to be larger than fifteen (15) inches in total length. Largemouth bass measuring less than twelve (12) inches may be taken and possessed within the six (6) allowed in possession while fishing on Andrews Lake.

(2) Notwithstanding paragraph (a)(2) of this section, it shall be unlawful for any person to have in possession while fishing on Andrews Lake any largemouth bass measuring from twelve (12) inches to and including fifteen (15) inches in total length.

(d) *Derby Pond and Hearn's Pond.*

(1) Notwithstanding subsection (a) of this section, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond more than one (1) largemouth bass of the six (6) allowed in possession to be larger than eighteen (18) inches. Largemouth bass measuring less than fifteen (15) inches may be taken and retained up to the legal possession limit while fishing on Derby Pond or Hearn's Pond.

(2) Notwithstanding the provisions of paragraph (a)(2) of this section, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond any largemouth bass measuring from fifteen (15) inches to and including eighteen (18) inches in total length.

Section 3. Trout.

(a) *Season.* – It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams, except between and including the first Saturday of April and the second Saturday of March of each succeeding year.

(b) *Hours of Fishing.* – It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams on the opening day of the trout season before 7:30 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

(c) *Possession.* – It shall be unlawful for any person to catch and/or have in his or her possession in any one day during the prescribed open season more than six (6) rainbow, brown and/or brook trout. On any day after a person takes his or her legal limit of trout, said person shall be prohibited from fishing in a designated trout stream on the same day, unless otherwise authorized by law or this regulation.

(d) *Trout Stamp.* – It shall be unlawful for any person to fish in a designated trout stream on or before the first Saturday in April and June 30, of the same year, and on or before the first Saturday in October and November 30, of the same year, unless said person has in his or her possession a valid trout stamp, or, unless said person is exempted by law from having a trout stamp.

(e) *Restricted Trout Stream.*

(1) It shall be unlawful for any person to fish in a restricted trout stream with more than two [(2)] flies on a line at any one time.

(2) It shall be unlawful for any person to use any metallic, wooden, plastic or rubber spinners, spoons, lures, plugs and/or natural bait on any restricted trout stream.

(3) It shall be unlawful for any person to have in his or her possession more than four (4) trout within 50 feet of any restricted trout stream. On the restricted trout stream only, trout may be caught and released as long as the four (4) trout possession limit is not exceeded. All trout released must be returned to the water as quickly as possible with the least possible injury.

(f) *Closure of Trout Stream.* – It shall be unlawful for any person to fish in a designated trout stream within two weeks (14 days) of a scheduled opening of the trout season.

Section 4. Striped Bass (hybrids).

It shall be unlawful for any person to have in his or her possession while fishing in the non-tidal waters of this State more than two (2) striped bass (*Morone saxatilis*) and/or striped bass hybrids (*Morone saxatilis crysops*) or any striped bass or striped bass hybrid under the length of fifteen (15) inches measured from the tip of the snout to the tip of the tail.

Section 5. Panfish Limits.

It shall be unlawful for any person to have in possession while fishing in any State-owned non-tidal water more than fifty (50) panfish in aggregate to include bluegill, pumpkinseed, redear sunfish, black crappie, white crappie, white perch or yellow perch, provided no more than twenty-five (25) of the fifty (50) allowed in possession are of any

one species.

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code,
Sections 302, 2733(a)(4) (21 Del.C. §§302,
2733(a)(4))

Policy Regulation Number 45

Concerning: Driver Improvement Problem Driver Program

I. Authority

The authority to promulgate this regulation is 21 Del.C. §302, 21 Del. C. §2733(a)(4) and 29 Del.C. §10115.

II. Purpose

The Highway Safety Program Standard for Driver Licensing as adopted by the National Highway Traffic Safety Administration requires each state to have a driver improvement program to identify problem drivers and take actions to reduce the frequency of their involvement in traffic accidents and violations. The Driver Improvement Problem Driver Program is designed to identify problem drivers, to change the problem driver's behavior by providing information and training opportunities and, if necessary, to progressively impose sanctions as more convictions/points are accumulated on the driving record. The goal of the program is crash prevention. The steps in the program are geared to the seriousness of the driving record.

The Division of Motor Vehicles Driver Improvement staff uses these policy guidelines to initiate program requirements and impose license suspensions.

III. Applicability

This policy regulation interprets the following sections found in Title 21: §2722, §2733(b), (e), (j), §2755, §2756, §4166(d), (j), §4169, §4175, 4175a, §4172(a), (b), §4172A, §6702, and §8101.

IV. Substance of Policy

1. Point System. The Division of Motor Vehicles shall identify problem drivers, educate and impose driver license sanctions based upon a point system. Violations will be assessed points based upon the following:

Violations	Points
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Speeding	1-9 miles per hour over posted limit	2
Speeding	10-14 miles per hour over posted limit	4
Speeding	15-19 miles per hour over posted limit	5
Speeding	20 or more miles per hour over posted limit	5*

*May result in additional actions including suspension

Violations	Points
Passing A Stopped School Bus	6
Reckless Driving	6
Aggressive Driving	6
Disregarding Stop Sign or Red Light	3
Moving violation contained in Chapters 27, 41 or 42 of Title 21	2

Point Credits

a. A licensee who is convicted of a speeding violation from 1 to 14 miles per hour over the posted speed limit will not be assessed points for the first violation within any three (3) year period provided the ticket is paid through the voluntary assessment center.

b. Completion of the Defensive Driving Course (DDC), recognized by the Division of Motor Vehicles and approved by the Insurance Commissioner’s Office will be entered on the licensee’s driving record. The licensee shall have a 3-point credit entered on their driving record following satisfactory completion of the course. The licensee is responsible for enrollment scheduling and the payment of all fees associated with this course. DDC credit is effective on the date of course completion. DDC credit will not be applied retroactively once an action item is in effect.

c. The point credits listed in paragraph (b) shall not be considered when determining the eligibility of a school bus operator. To determine the point level for a school bus operator or applicant, use full point value, not calculated points, for the previous 3-year period.

2. Driver Improvement Problem Driver Program. A driver enters the Driver Improvement Problem Driver Program when they accumulate 8 calculated points based upon on their driving record for the previous two years. At that time an advisory letter is sent to the driver. Studies show that early intervention with inexpensive actions reduce accidents and improve driving behavior.

Convictions received from other jurisdictions are posted to the Delaware driving record. The points will be assessed on these violations as though the offense was committed in this State in accordance with the Driver License Compact.

“The Aggressive Driving Committee, in accordance with Policy Regulation 90, must certify all behavior modification/attitudinal driving courses. The committee has the authority to designate alternative courses to comply with

the requirements of Policy Regulation 45.”

The actions listed below occur as calculated points are accumulated during any 24-month period. The 24-month period is computed based upon the date of the offense and “slides” forward based upon that date. The driving record will record the actions taken. The Driver Improvement Section will conduct a record review at each step in the process and schedule interviews as necessary. The action items maybe processed automatically without an interview. When the calculated points fall between the threshold limits, use the action items specified in the lower level. (Example: If the driver accumulates 9 points before any action is taken, send out an advisory letter as required when they accumulate 8 points.) If the driver accumulates 12 points before the advisory letter is sent, use the action item listed for drivers with 12 points.

Calculated Points	Action Items
8	Division of Motor Vehicles advisory letter is mailed to the driver. DDC credits will not impact the issuance of an advisory letter.
12	Driver must complete an approved “behavior modification/attitudinal driving course” within 90 days after notification (unless extended by the Division). Failure to comply or upon preference of the driver, a mandatory 2 month suspension will be imposed in lieu of the program.
14	Mandatory 4 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
16	Mandatory 6 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
18	Mandatory 8 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
20	Mandatory 10 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
22	Mandatory 12 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within

the previous 2 years.

3. Serious Speeding Violations. The Division of Motor Vehicles considers all speeding violations 20 miles per hour (MPH) or more above the posted speed limit to be a serious speeding violation that identifies the driver as a problem driver. The following actions will be taken:

(a) When a driver is convicted of a single speeding violation for driving 20 – 24 MPH over the posted limit and accumulated less than 12 calculated points, the Driver Improvement staff will review their driving record and send the driver an advisory letter.

(b) When convicted of driving 25 MPH over the posted limit, the driver's license will be suspended for a mandatory period of 1 month. The suspension period will be increased by one month for each additional 5 MPH over the initial 25-MPH threshold. Note: The driver may elect to attend the "behavior modification/attitudinal driving course" in lieu of a license suspension if they were driving 25 – 29 MPH over the posted limit.

(c) Anyone convicted of driving 50 MPH or more over the posted speed or driving 100 MPH or more shall be suspended for a period of one year. The driver is not eligible for an occupational license during the first three months of the suspension period.

4. Additional Sanctions Imposed by Statue or Policy.

(a) Passing a stopped school bus in violation of 21 Del.C. Section 4166(d). For the first offense, one-month drivers license suspension. For the second offense, six months suspension. For the third or more offenses, suspend the driver's license for twelve months.

(b) Driving in violation of a license restriction per 21 Del.C. Section 2722. For the first offense, send an advisory letter. Suspend the driver's license for one-month for subsequent offenses.

(c) Speed exhibition violation per 21 Del.C. Section 4172(a)(d). One-month suspension for the first offense and one-year driver license suspension for subsequent offenses.

(d) Spinning wheels violation per 21 Del.C. Section 4172(b). Send an advisory letter for the first offense. Suspend the driver's license for one year for second and subsequent offenses.

(e) Malicious mischief violations per 21 Del.C. Section 4172A. One-month driver license suspension for the first offense. One-year suspension for the second and subsequent offenses.

(f) Knowingly permit an unlicensed person to operate a vehicle violation per 21 Del.C. Section 2755. Send an advisory letter for the first offense. Three-month driver license suspension for the second and subsequent offenses.

(g) Driving without consent of the owner violation per 21 Del.C. Section 6702. One-month driver licenses

suspension for the first offense and three month's suspension for the second and subsequent offenses.

(h) Driving during suspension or revocation violations per 21 Del.C. Section 2756. A conviction for driving during suspension or revocation shall extend the period of the suspension or revocation for a like period. No driving authority will be permitted during the balance of the initial suspension or revocation period and the extended period. Any driving authority previously issued by the Division must be surrendered.

Note: For violations to be considered a subsequent offense, the violations must be under the same subsection and cannot be a combination of violations such as Sections 4172(a) and Section 4172(b). To be considered a second or subsequent offense, the convictions must be within the previous three years.

5. Occupational License. In the event of a suspension of a driver's license pursuant to this policy regulation, the Division may issue an occupational license during the period of suspension if the applicant stipulates the suspension has created an extreme hardship. However, no such occupational license shall be issued if the applicant has two previous suspensions under this policy regulation within the previous 3 years, or if the suspension is for physical and/or mental disability, or if the license is revoked for convictions of any crimes specified in Section 2732 of Title 21 even though it causes an extreme hardship. Any driver convicted of operating a motor vehicle in violation of the restrictions imposed by the occupational license shall immediately extend the suspension period for an additional like period and shall direct the driver to surrender their occupational license. No more than one occupational license under this policy shall be issued within any 12-month period.

Drivers suspended under this program are ineligible for an occupational license for one month. If the calculated point level reaches 15 or more points in a 24-month period, an occupational license will not be issued until the calculated points are less than 15 points.

6. Calculated Points. For the purposes of this Policy Regulation, calculated points are credited at full point value for the first twelve months from the date of the violation. After the initial 12 months have expired, the calculated points will be credited at (½) point value for the next 12 months. The Division will only take action based upon convictions accumulated within the 24-month period following the date of the offense.

7. Moving Violations. Those violations contained in 21 Del.C. Chapters 27, Chapter 41 and Chapter 42, excluding those violations that require mandatory suspension or revocation actions. Multiple violations occurring within a 24-hour period shall be considered individual violations for the purposes of this policy regulation.

8. Advisory Letter. The Division will send an

advisory letter to those drivers who accumulate 8 calculated points or when convicted of speeding 20 – 24 MPH over the posted limit. The purpose of the advisory letter is to express our concern about the operator's driving habits and their impact upon highway safety. The letter will inform the driver about the Driver Improvement Problem Driver Program. An advisory letter may be sent for both point accumulations and excessive speed violations.

9. Record Review. The goal of the record review is to assess any problems the driver may have and require a course of action. The record review may result in a driver improvement interview/counseling session, medical or vision examination, knowledge and/or skills testing, restricted license, license suspension or the surrender of a license.

10. Interviews. The Driver Improvement staff may schedule the driver to attend an interview based upon the record review. The licensee may request an interview with a Driver Improvement Officer or staff member when notified of pending action against them. The following issues are open to discussion:

- The driver may request an additional 90 days to complete a mandatory attendance at the "behavior modification/attitudinal driving course" or they may request a license suspension in lieu of attending the program. Any further delays in completing the program must be approved by the Driver Improvement Manager or the Chief of Driver Services.
- The driver can present evidence that the convictions on their driving record belong to another driver. If proven, the convictions will be removed.
- If the violation on record is under appeal by the court, the driver must submit a copy of the appeal bond and the violation will be removed from the driving record. If applicable, the suspension action resulting from this violation be removed from the driving record.
- The Driver Improvement staff may require the driver to complete a medical or vision examination, pass a knowledge or skill test or restrict their driving privileges based upon the results of the interview.
- This policy regulation shall have no effect on the revocation actions, medical qualifications or requirements, or suspension action required by statute unrelated to this policy.

V. Severability

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining

portions of this rule shall remain in full force and effect under Delaware law.

VI. Effective Date

The following regulations shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del. C. §10118(e).

Brian J. Bushweller, Secretary
Department of Public Safety
4/13/00

Michael D. Shahan, Director
Division of Motor Vehicles
4/11/00

Policy Regulation Number 90 Concerning: Aggressive Drivers

I. Authority

This Regulation is adopted pursuant to 21 Del.C. Section 4175A and promulgated in accordance with 21 Del.C. Section 302 and with the procedures specified in the Administrative Procedures Act, 29 Del.C. Section 10115.

II. Purpose

This policy regulation establishes administrative procedures used to administer the aggressive driver program as outlined in 21 Del.C. Section 4175A. Aggressive driving is defined in terms of existing Title 21 offenses such as failure to yield, unsafe lane change, disregarding a traffic control device, failure to stop, following too closely, passing on a shoulder and speeding. Individuals convicted of three or more of these offenses as a result of continuous conduct are guilty of aggressive driving and are subject to increased penalties. Offenders are required to complete a course of instruction established by the Secretary of Public Safety to address behavior modification or attitudinal driving problems. The Secretary administers the course and programs, adopts rules and regulations therefor and establishes a fee schedule for enrollment in the programs that will not exceed the maximum fine that may be imposed under the statute.

III. Duties and Responsibilities

A. Duties and Responsibilities of the Division of Motor Vehicles.

1. When convicted of aggressive driving, the court will send the Division of Motor Vehicles' Driver

Improvement Section a copy of the court order directing the driver to complete a course of instruction to address behavior modification or attitudinal driving problems and recommending suspension of the driver's license or driving privileges for failure to attend the course.

2. The driver is responsible for contacting the Division of Motor Vehicles Driver Improvement Section. That Division will provide them information concerning the course(s) established or approved by this State.

3. If the driver is licensed in another state, the driver may either attend an established course taught in Delaware or attend a similar course taught in their home state. The driver must submit documentation from the licensing agency or from the school providing the training outlining the length of the training, course syllabus, and any other information needed to evaluate the alternative course. The Aggressive Driving Committee will evaluate and approve or disapprove out-of-state courses. If the out-of-state licensed driver fails to contact the Division or to complete the course within 90 days, the Division will notify the convicting court. The court will hold a non-compliance hearing and will, at its discretion, either issue a failure to comply order or will allow the driver/defendant to re-enter the program. A copy of all non-compliance orders issued will be forwarded to DMV for them to suspend the licensee's driving privileges pursuant to 21 Del. C. Section 2733(c). The Division will forward the failure to comply order to the state-licensing agency in which the driver is licensed. If the licensee, through no fault of his own, is unable to complete the course within the 90-day period, the Driver Improvement Section may extend the required completion date by an additional 90 days upon written request.

4. If a Delaware licensed driver has not contacted the Division or has not completed the required course within 90 days after the conviction, the Driver Improvement Section will notify the convicting court. The court will hold a non-compliance hearing and will, at its discretion, either issue a failure to comply order or will allow the driver/defendant to re-enter the program. A copy of all non-compliance orders issued will be forwarded to DMV for them to suspend the license. The Division will suspend their driver's license upon direction of the court pursuant to 21 Del. C. Section 2731(a). The license may be reinstated once the course is completed and the appropriate fees paid. An occupational license will not be issued during the period of the suspension. If the licensee, through no fault of his own, is unable to complete the course within the 90-day period, the Driver Improvement Section may extend the required completion date by an additional 90 days upon written request.

5. The Driver Improvement Section will notify the court when the aggressive driver completes the required training course.

B. Duties and Responsibilities of the Office of

Highway Safety.

The Office of Highway Safety is responsible for organizing and managing the Aggressive Driver Committee.

IV. Aggressive Driving Committee

A. The Aggressive Driver Committee ("Committee") membership is as listed in this subsection. The Committee members shall not be employed by or have any financial interest in the companies selected as providers.

1. Chairman, Director of the Office of Highway Safety,
2. Chief of Driver Services,
3. Driver Improvement Manager or Assistant Manager,
4. Representative from the Office of Highway Safety,
5. Division of Motor Vehicle Training Officer.

B. Duties. The Committee shall:

1. Be chaired by the Director of the Office of Highway Safety who shall make recommendations to the Secretary concerning the duties set forth herein:

2. Review and examine aggressive driving course providers, instructors and prospective providers and instructors to its satisfaction. Recommend certification, denial of certification or de-certification of a course provider, instructor, prospective provider and instructors.

3. Review and examine behavior modification/attitudinal driving courses and shall further monitor courses to ensure each course continues to meet the Committee's minimum requirements, as outlined in the Regulation. The Committee may recommend amendments to course requirements contained in this Regulation that may be adopted by either amending this Regulation or by a letter signed by the Secretary.

4. Establish a schedule of fees for enrollment in the course, which shall not exceed the maximum fine imposed per 21 Del. C. Section 4175A(c) for those convicted of a first offense and subsequent offenses for aggressive driving.

5. Annually certify approved course providers and individual instructors when the course provider/instructor continues to meet the requirements of this Regulation; and

6. Conduct any other activity reasonably related to the furtherance of its duties.

[7. Designate alternative courses to comply with the requirements of 21 Del.C. Section 4175A, if no acceptable vendor applies for certification for a course.]

V. Provider Certification Requirements

A. Each course provider shall submit for approval a written course description for any behavior modification/attitudinal driving course to be offered that minimally

includes the following elements:

1. Provide the course curriculum and any handouts, texts and other material used in the course.

2. Inform the Committee as to how their curriculum is designed to induce positive changes in attitude and driving behavior in persons identified as problem drivers. The provider will discuss those psychological principles used in the course to change behavior (such as B. F. Skinner's "Behavior Modification" studies, William Glasser's "Reality Theory", programs developed for juvenile or first time offenders generally known as "Scared Straight" programs).

3. If available, the provider may submit studies that substantiate that their course curriculum has improved the student's driving behavior as a result of completing their course as taught in Delaware or in any other jurisdiction.

4. Provide a profile of the company's organizational capabilities and a detailed description of its experience relevant to providing the proposed course of instruction. The provider must have at least five years experience conducting in-class driver training programs such as initial and advanced driver training course, license upgrade training, rehabilitation training, defensive driving course or behavior modification courses.

5. Assume all costs of the behavior modification/attitudinal driving course of instruction including classroom facilities in each county, training costs and payment of employee wages. The State of Delaware will not reimburse the provider for any costs.

6. Specify where the classes will be taught in each county. If available, the provider may request the use of classroom space, at no cost, in the Division of Motor Vehicles facilities. The classroom space must be accessible to drivers with physical disabilities and in compliance with the Americans With Disabilities Act of 1990. The Committee reserves the right to reject the use of any facility it deems unfit for classroom instruction.

7. The provider must be able to conduct at least one class per month at a location deemed convenient for a majority of the participants. At least one class will be taught each quarter. The class size should not exceed thirty students.

8. Assess a reasonable and uniform fee for the course as established by the Committee in accordance with 21 Del. C. Section 4175A(d). The provider must arrange a payment schedule for offenders who are unable to pay the course in a single payment. The provider is responsible for any costs associated with the collection of checks drawn on insufficient funds or on unpaid registration fees. The provider may withhold the certification of course completion until all fees are paid in full.

9. Maintain records relevant to the behavior modification/attitudinal driving course and its participants. As a minimum, the provider must retain for at least three

years the class locations, times, number of participants and the names, driver license numbers and date of birth of those completing and those failing to complete the course. Department of Public Safety officials will have access to these records for the purposes of monitoring trends and evaluating the effectiveness of the course. The providers must have the capacity to access and update the Department of Public Safety's Aggressive Driver Tracking System.

10. Require each student to receive a minimum of eight hours of classroom training. Each hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of the course curriculum. The instructors will maintain an atmosphere appropriate for class-work and present the course in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein. The instructors will be in the classroom with the students during any and all periods of instructional time.

11. Supply students who complete the behavior modification/attitudinal driving course with a certification of completion that includes, at a minimum:

a. The student's name, date of birth, driver license number and address, and

b. The date of the class, the name of the provider, title of the course completed and the course sponsor's authorized signature.

12. Require that each student fill out a standardized Course/Instructor Evaluation Form, as designated by the Committee, upon completing the course. The provider will retain one copy of this form for three years and one copy will be sent to the Committee.

13. Provide in-service training or other training session for all instructors, regarding behavior modification/attitudinal driving courses.

14. Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division. Upon request, the provider will inform the Division when a student has not successfully completed a required course.

VI. Basic Instructor Requirements

A. Each instructor shall:

1. Be at least 18 years of age;

2. Be a high school graduate or have a G.E.D.;

3. Hold a valid driver's license with no more than 6 points, no suspensions or revocations in the past two years; and

4. Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Committee reserves the right to require a criminal history background check of all applicants for an instructor's certification.

VII. Course and Instructor Re-certification Procedures

A. Annually the provider shall:

1. Submit evidence that their instructors have taught the certified course a minimum of 8 hours in the previous calendar year;

2. Submit evidence that the instructor attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified behavior modification/attitudinal driving course provider; and

3. Certify that the instructors continue to meet the instructor requirements as outlined in this Regulation.

4. When the Committee initially certifies a provider and their instructors, they will be given a one-year contract. The provider must apply for re-certification by December 31 every year. The Committee will send out application renewal requests in October. The providers must complete the renewal applications and return them to the Committee between November 15 and December 31. The Committee will re-certify or deny re-certification by January 31.

VIII. De-Certification, Suspension and Probationary Status

A. Course providers and instructors may be de-certified, placed on probation for not more than 90 calendar days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. The Committee shall direct investigations relating to the issues of compliance.

B. Prior to de-certification, placement on probation or suspension of certification, the Committee shall notify the course provider/instructor, in writing. The course provider/instructor shall be given a reasonable opportunity to submit evidence of compliance in their defense.

C. A course provider/instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days shall be subject to de-certification at the end of the probationary period.

D. Course providers/instructors may be de-certified, suspended or placed on probation for the following:

1. Submitting false information in or with the Application for Certification/re-certification;

2. Falsification of, or failure to keep and provide adequate student records and information as required herein;

3. Evidence that the course is not effective in changing the driving behavior of those problem drivers who complete the course;

4. Falsification of, or failure to keep and provide adequate financial records and documents as required; and

5. Failure of any provider or instructor to comply with the standards set forth in this Regulation.

IX. APPEAL PROCEDURES

A. Within 10 business days after the date of written

notification of certification denial, suspension, probation or de-certification, the course provider/instructor may file an appeal requesting a review of the action taken.

B. The appeal shall be addressed to the Committee, citing the reasons for the request, and accompanied by any other relevant substantiating information.

C. The Committee shall conduct all hearings pursuant to Title 29, Chapter 101 of the Delaware Code.

Brian J. Bushweller, Secretary
Department of Public Safety
4/13/00

Michael D. Shahan, Director
Division of Motor Vehicles
4/11/00

GOVERNOR'S APPOINTMENTS

1753

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Architectural Accessibility Board	Ms. Loretta Sarro	05/12/03
Board of Architects	Mr. Mr. Charles Ryan	05/12/03
Board of Audiologists, Speech Pathologists & Hearing Aid Dispensers	Ms. Marilyn Karam	05/12/03
Board of Nursing	Mr. Robert E. Lawson	05/12/03
Board of Pharmacy	Mr. Charles D. Davis	05/12/03
Board of Registration for Land Surveyors	Mr. H. Scott Peterson	05/12/03
Board of Social Work Examiners	Ms. Maria M. Carroll	05/12/03
Council on Aging and Adults with Physical Disabilities	Ms. Azalia S. Briggs	04/27/03
Council on Soil and Water Conservation	Ms. Constance Holland Dr. Hiram Lasher Ms. Barbara J. Sapp Mr. William W. Vanderwende	05/09/03 05/09/03 05/09/03 05/09/03
Delaware Budget Office	Mr. Robeert Scoglietti, Director	Pleasure of the Governor
Delaware Emergency Medical Services Oversight Council	Mr. Edward A. Rose	Pleasure of the Governor
Delaware Heritage Commission	Mr. Robert Byrd	05/09/03
Delaware Nutrient Management Commission	Mr. Edwin L. Brown, II Mr. Jeremy Homer Mr. Dale J. Ockels	04/19/03 04/19/01 04/19/03
Delaware Technology Park Board of Directors	Mr. Anthony Felicia, Jr. Mr. David Simpson	Pleasure of the Governor Pleasure of the Governor
Delaware Thoroughbred Racing Commission	Mr. Bernard J. Daney, Chairperson	04/19/06
Electronic Government Steering Committee	The Honorable Jack A. Markell, Chairman The Honorable Patricia W. Griffin	Pleasure of the Governor Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Examining Board of Physical Therapists	Ms. Kathy Watson	05/12/03
Governor's Advisory Council for Exceptional Citizens	Ms. Janet R. Cornwell	Pleasure of the Governor
	Ms. Patricia Darlington	Pleasure of the Governor
	Ms. Cheryl A. Gollicker	Pleasure of the Governor
	Ms. Karen O'Brien	Pleasure of the Governor
	Ms. Julia M. Pearce	Pleasure of the Governor
	Ms. Faye Pleasanton	Pleasure of the Governor
	Ms. Nancy Suleski	Pleasure of the Governor
Industrial Accident Board	Mr. John D. Daniello	04/19/06
Interagency Coordinating Council	Ms. Nancy W. Colley	01/09/01
Justice of the Peace for Kent County	The Honorable Fred C. Lord, Jr.	04/19/06
Justice of the Peace for New Castle County	The Honorable Bonita N. Lee	04/19/06
	The Honorable William T. Moser	05/01/06
	The Honorable Nancy C. Roberts	04/19/06
	The Honorable James A. Tull	04/19/06
Justice of the Peace for Sussex County	The Honorable William L. Boddy, III	04/19/06
	The Honorable Joseph Melson, Jr.	04/19/06
Organ and Tissue Donor Awareness Board	Ms. Jan Weinstock	09/03/02
Superior Court of New Castle County	The Honorable Richard R. Cooch Resident Judge	05/10/12
Unemployment Compensation Advisory Council	Mr. Samuel Latham	05/09/03
Veterinary Medical Education Board of Trustees	Dr. Sharon Alger-Little	05/12/03
	Dr. Max L. Sponseller	05/12/03
	Mr. Jeffrey W. Bullock	Pleasure of the Governor

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

**Case-by-Case Nitrogen Oxides (NO_x) Reasonably
Available Control Technology (RACT) Determinations
under Regulation No. 12 of the State of Delaware
“Regulations Governing the Control of Air Pollution.”**

1. TITLE OF THE REGULATIONS:

Case-by-Case Nitrogen Oxides (NO_x) Reasonably Available Control Technology (RACT) Determinations

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to submit to the EPA for inclusion in the Delaware State Implementation Plan (SIP) four Case-by-Case NO_x RACT determinations. These determinations have been made pursuant to Regulation No. 12, NO_x RACT, of the State of Delaware “Regulations Governing the Control of Air Pollution.” SPI Polyols, Inc., CitiSteel, and General Chemical Corporation are affected by these determinations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C., Chapter 60 and Regulation No. 12 of the State of Delaware “Regulations Governing the Control of Air Pollution.”

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None.

6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on these determinations on June 21, 2000 beginning at 6:00 p.m. in the Department’s facility located at 715 Grantham Lane, New Castle Delaware. Comments may be made at the hearing, or submitted to the Department in writing not later than the close of business, June 30, 2000.

7. PREPARED BY:

Ronald A. Amirikian/(302)323-4542

The air quality planning requirements for the reduction of NO_x emissions through RACT are set out in section 182(f) of the federal Clean Air Act (CAA). Section 182(f) requires ozone nonattainment areas classified moderate or above to apply the same requirements to major stationary sources of NO_x as are applied to major stationary sources of volatile organic compounds (VOCs).

Delaware is composed of three (3) air quality management areas: Kent, New Castle, and Sussex counties. Kent and New Castle Counties are classified as severe ozone nonattainment areas, and all three counties are located in the ozone transport region that was established under Section 184 of the CAA. Section 182 of the CAA requires all major sources of VOCs (and thus NO_x) in moderate or above ozone nonattainment areas, and in any ozone transport region to install RACT. This means that any major source of NO_x emissions in Delaware must install RACT. The major source threshold for NO_x is 25 tons per year (TPY) in Kent and New Castle counties and 100 TPY in Sussex county.

Effective November 24, 1993 the Delaware Department of Natural Resources and Environmental Control (DNREC) promulgated Regulation No. 12 of the State of Delaware “Regulations Governing the Control of Air Pollution” as a means to define and impose NO_x RACT requirements on major sources of NO_x in Delaware. Regulation No. 12 defines RACT as “the lowest emission limit for NO_x that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.”

Sections 3.2 through 3.6 of Regulation No. 12 prescribe RACT for most categories of combustion sources as a specific equipment requirement and/or an emission limitation. In addition, Sections 3.2 through 3.5 of Regulation No. 12 allow for the submission, evaluation, and approval of a case-by-case equivalent RACT determination that may replace the specific equipment requirement or emission limitation specified in those sections. The Department knows of no equivalent RACT determinations that must be processed under Section 3.2 through 3.5 of Regulation No. 12.

Sources not regulated under Sections 3.2 through 3.6 of Regulation No. 12, and not exempted under Section 4 of Regulation No. 12 are covered under Sections 3.8 and 6 of Regulation No. 12.

Section 3.8 required major NO_x emitting sources to:

- a) Notify the Department of their applicability

status, and

b) Submit a determination as to what constitutes reasonably available control technology for the source including technical and economic support documentation, and

c) Provide a schedule, acceptable to the Department, for implementing the RACT program as expeditiously as possible, but not later than May 31, 1995, including interim dates for the issuance of purchase orders, start and completion of modifications, and completion of compliance testing.

Section 6.1(b) requires sources subject to Section 3.8 of Regulation No. 12 to identify equipment or process additions, modifications, or adjustments to reduce NO_x emissions, and to provide to the Department technical and economical data that supports the proposed RACT proposal.

Pursuant to Sections 3.8 and 6 of Regulation No. 12, the Department received case-by-case NO_x RACT submissions for the following four (4) processes:

<u>Company</u>	<u>Process</u>
SPI Polyols, Inc.	Polyhydrate Alcohol's Catalyst Regenerative Process
CitiSteel	Electric Arc Furnace
General Chemical Corp.	Sulfuric Acid Process and Interstage Absorption System
General Chemical Corp.	Metallic Nitrite Process

For each alternate RACT proposal received, Section 5.1 of Regulation No. 12 requires the Department to approve, deny, or modify the RACT determination proposed. Section 5.2 of Regulation No. 12 provides that upon receipt of notice of the Department's approval of the RACT proposal, the source shall begin implementing the RACT program according to the schedule established in the approved RACT plan. Finally Section 5.3 of Regulation No. 12 requires the Department to submit each RACT determination made under Section 5 of Regulation No. 12 to the Environmental Protection Agency for approval as a revision to the State Implementation Plan (SIP).

On June 16, 1999 the Environmental Protection Agency (EPA) published in the federal register (Volume 64, Number 115, Pages 32187-32189) a final rule granting conditional limited approval of Delaware's 1993 request to include Regulation No. 12 into Delaware's SIP.

"Conditional" Nature of Approval: The EPA's June 16, 1999 final rule requires Delaware to submit to the EPA all alternative RACT determinations approved under Section 5 of Regulation No. 12, and to certify by no later than July 17, 2000 that it has submitted to the EPA all such determinations for all currently known subject sources. Once this is done,

the "conditional" nature of EPA's approval will be removed.

"Limited" Nature of Approval: Once the EPA receives, in fulfillment of the requirement described above, and approves all alternative RACT determinations that the Department has approved under Section 5 of Regulation No. 12, the limited nature of the approval will be removed; and Regulation No. 12 will be fully approved.

Subparts F and Appendix V of 40 CFR Part 51 prescribe the procedure States are to follow when submitting to the EPA any revision to that State's SIP. Such procedures include the holding of a properly noticed public hearing, the submittal to the EPA of evidence showing the adherence to specific procedural requirements (e.g., evidence of legal authority, certification that a public hearing was held, etc.), and technical support documentation.

The following is a description of each of the four case-by-case NO_x RACT determinations:

**SPI Polyols, Inc.
Atlas Point Site
321 Cherry Lane
New Castle, DE 19720**

Polyhydrate Alcohol's Catalyst Regenerative Process with NO_x Scrubber

Process Description

This is a batch process involving the treatment of spent nickel catalyst from the sugar reduction process and its subsequent conversion to a "green catalyst" slurry that is filtered and dried for reuse. The preparation of this slurry involves several steps in which nitric acid is used. Among them are nickel metal dissolution for nickel makeup, nickel recovery from process waste streams and the digestion of spent catalyst. Of these, the last two are the ones mainly related to the formation of nitrogen oxides.

The spent catalyst is initially reacted under controlled conditions of temperature, agitation and pH with nitric acid. During this first conversion, nickel nitrate (Ni(NO₃)₂) is formed once the nitric acid is added. During the course of this reaction nitrogen oxides are occasionally formed. Further steps take the nickel nitrate into a usable intermediate: nickel hydroxide (Ni(OH)₂), which in turn is treated elsewhere for conversion to its active form before it is used in the process.

The key chemical reaction (not balanced) involved in the digestion process is as follows:



NO_x Emission Information

NO_x is given off from this process in the reaction

between spent catalyst and nitric acid. The emission is predominately associated with the addition of nitric acid to the digester tanks.

Stack testing of the process was conducted on November 16 through 18, 1993. The Department witnessed and reviewed the results of this testing and determined that, while there were some deviations from the test protocol, the results are credible and representative of NO_x emissions. This testing indicated an average emission rate of 0.8 lb/hr, or 3.5 TPY of NO_x based on continuous operation.

This batch process is not in and of itself a major NO_x emitting source, rather it is subject to RACT requirements because it is located at a facility that is a major NO_x emitting source.

RACT Analysis

Control of NO_x from the process is by two means: 1) process control and 2) operation of a counter flow packed column scrubber and a cross-flow spray scrubbing system.

Process Control: NO_x formation occurs predominantly due to fuming in the digester tanks, which is associated with an exothermic reaction when nitric acid is added to a digester tank. Stack testing conducted in 1993 confirmed a high correlation between the addition of nitric acid to a digester tank and the emission of NO_x. The formation of NO_x is minimized by submerged nitric acid fill in the mixing zone of each digester tank, adding nitric acid to only one digester tank at a time, and by controlling the rate of nitric acid addition and digester tank temperature to a rate and temperature established in accordance with good air pollution control practices.

Scrubbing System: Off-gas swept from the digester tanks passes through a scrubbing system prior to release to the atmosphere. The scrubbing system consists of two water spray nozzles used to reduce the inlet temperature, a counter-current packed column scrubber with plastic packing, an air dilution valve to promote the oxidation of any NO to NO₂, all followed by another water spray washer.

The Department believes that at the temperatures (70-120 °F), NO_x concentrations (~5 to 350 ppmv) and flow rates (2000-9000 SCFM) present in the off gas system, the rate of reaction of NO to NO₂ is too slow to affect noticeable reductions of NO, beyond a slight removal by the various water contacts. However, the Department believes that because NO₂ is very soluble in water and that it decomposes to form nitric acid the removal of NO₂ is high. Measurements of the pH of the scrubber blow down show that the pH fluctuates between neutral or slightly acidic to strongly acidic. This indicates 1) NO_x is not continuously generated throughout the batch process (see "process

control" portion of RACT limitation above), and 2) the scrubbing system is reducing the quantity of NO_x being emitted to the atmosphere (i.e., by promoting the reaction of NO₂ with the H₂O to form HNO₃).

RACT Applicable Requirements

Operational Limits

A. Nitric acid shall be added using a submerged feed, in the mixing zone, and to only one digester tank at any particular time.

B. The nitric acid addition rate to each digester tank shall not exceed a rate established in accordance with good air pollution control practices, accepted by the Department, and made federally enforceable.

C. Nitric acid shall be added to a digester tank only when the temperature of the liquid in that digester tank is within a range established in accordance with good air pollution control practices, accepted by the Department, and made federally enforceable.

D. All emissions to the atmosphere from any digester tank shall pass through a water scrubber that is operated and maintained in accordance with the manufacture's specification and in accordance with good air pollution control practices.

E. The pressure drop across the scrubber shall not fall outside of a range established in accordance with good air pollution control practices, accepted by the Department, and made federally enforceable.

F. There shall be no visible emissions from the water scrubber.

Compliance Method

Compliance with the visible emission limitation shall be determined by methods accepted by the Department and made Federally enforceable. Compliance with all other operational limitations shall be demonstrated based on monitoring and record keeping requirements.

Monitoring

A. The flow rate of nitric acid to any digester tank shall be continuously monitored at all times when nitric acid is being added to that digester tank.

B. The temperature of the liquid in any digester tank shall be continuously monitored at all times when nitric acid is being added to that digester tank.

C. The Company shall install a gauge that indicates the pressure drop across the counter current packed column scrubber.

D. The scrubber system exhaust stack shall be observed for visible emissions pursuant to a schedule

accepted by the Department and made federally enforceable. Any such observations shall be conducted while nitric acid is being added to any digester tank.

Testing

A. Inspect the NO_x scrubber, scrubber packing and spray nozzles and demister, pursuant to the manufacturer's recommendation, but not less than annually.

B. Calibrate pursuant to the manufacturer's recommendation, but not less than annually, each nitric acid flowmeter, each temperature monitor, and each differential pressure gauge.

Record Keeping

A. The Company shall keep daily records that indicate the operating status of the catalyst regeneration process including whether or not the process operated that day and, if it did operate, the number of batches produced.

B. For each batch, the Company shall continuously record the nitric acid addition rate, and the temperature of the liquid in each digester tank during nitric acid addition.

C. At least once each day the catalyst regeneration process operates, the Company shall record the pressure drop across the scrubber.

D. The Company shall maintain a log of all visible emissions observations made including the date, time, and results of each observation.

E. The Company shall maintain records of any scheduled or non-scheduled maintenance and calibration data for the scrubber, the nitric acid flow monitor, the temperature monitor, or the differential pressure gauge.

Reporting

No reporting requirements beyond those of Regulation No. 30 are being imposed on this process under Regulation No. 12.

**CitiSteel USA, Inc.
4001 Philadelphia Pike
Claymont, Delaware 19703**

Electric Arc Furnace (EAF)

Regulated Pollutants Affected:

This determination only pertains to the regulation of the ozone precursor, nitrogen oxides (NO_x).

Process Description

The EAF operated by CitiSteel USA, Inc. is a 150 tons per charge rated capacity, batch process which produces

molten steel by melting steel scrap. It consists of a large steel cylindrical vessel equipped with a removable roof through which three (3) retractable carbon electrodes are inserted. The electrodes are lowered through the roof of the furnace and are energized by an alternating current, creating arcs that melt the steel scrap charge with their heat. Additional heat is produced by the resistance of the metal in the arc paths. Temperatures inside the EAF reach 3,000 to 3,400 degrees Fahrenheit. The operation includes an oxygen-fuel door burner, specifically designed for preheating and cutting cold scrap in the EAF. The oxygen-fuel burner is rated at 14 MMBTU/hr and uses natural gas as fuel in conjunction with a pure oxygen supply. Once the melting cycle is completed, the carbon electrodes are raised, the roof is removed, and the vessel is tilted to pour the molten metal in a ladle pot.

NO_x Emission Information

The predominate source of NO_x is thermal NO_x formed from nitrogen in the ambient air. To a much smaller extent, NO_x is formed from the oxidation of nitrogen contained in the scrap steel charge, and the oxygen-fuel burner.

A Stack Test of the EAF conducted on April 24 and 25, 1996 quantified the emission rate of NO_x to be an average of 0.36 lb. of NO_x per ton of steel produced. Based on 0.36 lb/ton and 540,000 tons of steel produced per this equates to an annual NO_x emission of 97.2 tons per year.

The EAF is in and of itself a major NO_x emitting source, and is subject to the requirements of Regulation No. 12.

RACT Analysis

Typical controls practiced on fuel fired combustion equipment such as low NO_x burners, flue gas recirculation, selective catalytic reduction, etc. are not transferable to an EAF because of the lack of typical burner assemblies, and the unstable gas temperature, air flow and high particulate concentrations. Several technical information sources were searched in an attempt to find NO_x control information relative to EAF's. The results of this search are as follows:

A review of the EPA's Clean Air Technology Center RACT/BACT/LAER Clearinghouse revealed no information regarding application of NO_x controls for EAF's.

The EPA has not published or proposed any new source performance standard (NSPS) for EAF's relative to control of NO_x emissions.

EPA's document "Alternative Control Techniques Document - NO_x Emissions from Iron and Steel Mills", Section 5.3.5, Electric Arc Furnaces, states "There is no information that NO_x emissions controls have been installed

on EAF's or that suitable controls are available."

No other information relevant to NO_x emissions control of EAF's was identified.

Based on this information the Department agrees with CitiSteel's conclusion that NO_x controls are not technologically feasible on EAF's, and that current operation represents RACT for the EAF.

RACT Applicable Requirements

The Department imposes no additional applicable requirements on the EAF under Regulation No. 12 of Delaware's "Regulations Governing the Control of Air Pollution."

General Chemical Corporation
6300 Philadelphia Pike
Claymont, DE 19703

Sulfuric Acid Process and Interstage Absorption System

Regulated Pollutants Affected:

This determination only pertains to the regulation of the ozone precursor, nitrogen oxides (NO_x).

Process Description

The sulfuric acid process and interstage absorption system (ISA) is a contact sulfuric acid manufacturing process. The three main sub-processes include 1) the burning of elemental sulfur, spent sulfuric acid, and hydrogen sulfide to generate SO₂, 2) the catalytic oxidation of the SO₂ to SO₃, and 3) the absorption of SO₃ into strong H₂SO₄ solution to form H₂SO₄. The burning sub-process incorporates two burner/boilers with each having a rated heat input capacity of forty-six (46) MMBTU/hr.

NO_x Emission Information

NO_x emissions are generated only during the combustion sub-process (i.e., the burning of elemental sulfur, spent sulfuric acid, and hydrogen sulfide).

Stack testing on May 5, 1999 indicated that the NO_x emission rate from the ISA was 10.44 lb/hr (26.74 ppm). This equates to an annual NO_x emission of forty-four (44) tons per year assuming continuous operation at this emission rate.

The ISA is in and of itself a major stationary source of NO_x, and is subject to the Requirements of Regulation No. 12.

RACT Analysis

This combustion operation is not covered under Section 3.3 of Regulation No. 12 since Section 3.3 covers only fuel

burning equipment whose primary purpose is to produce heat to be used; the primary purpose of burning the sulfur is to produce SO₂. Evidence of this is the need to cool the exhaust from the burners prior to the next step in the process and after other steps in the process (i.e., the oxidation and absorption steps are highly exothermic). Section 3.3 does not apply and the process must be evaluated under Section 3.8 of Regulation No. 12.

Under Section 3.8 of Regulation No. 12, the Department considered the feasibility of both minimizing the generation of NO_x and the installation and operation of post-combustion NO_x removal technologies.

NO_x Generation.

Sulfur provides the majority of heat input to the burners, and is by definition a low NO_x fuel (i.e., low fuel bound NO_x). This means that all of the NO_x generated is thermal NO_x. Combustion occurs at 1,700 to 2,000 °F, which is a relatively low temperature with regard to thermal NO_x generation dynamics. Because of the low fuel NO_x, the low combustion temperature, and the fact that all of the combustion gases are an integral part of the ISA process, the Department agrees with General Chemical that combustion modifications are not feasible relative to RACT.

Add-on NO_x removal technologies.

Several technical information sources were searched in an attempt to find NO_x control information relative to sulfuric acid manufacturing. The results of this search are as follows:

A review of the EPA's Clean Air Technology Center RACT/BACT/LAER Clearinghouse revealed no information regarding application of NO_x controls to sulfuric acid manufacturing.

The EPA has not published or proposed any new source performance standard (NSPS) for sulfuric acid manufacturing relative to control of NO_x emissions.

No other information relevant to NO_x emissions control of sulfuric acid manufacturing was identified.

It is noted that approximately ¾ of the NO_x produced passes through the converters, absorbers, and ISA, and that these process components remove a portion of the NO_x generated. While SO₃ is absorbed in strong H₂SO₄, the NO_x in the gas stream is also absorbed to form nitrogen containing compounds and impurities.

General Chemical evaluated several NO_x removal technologies and, based on economics, conclude they were not feasible. Such evaluation addressed SCR and wet scrubbing. Relevant factors contributing to the high cost are

the low concentration of NO_x in the exhaust stream and the high flow (i.e., 26.74 ppm and 54,737 scfm from the 1999 stack test).

For comparison purposes, Table 1 of Regulation No. 12 defines RACT for combustion units with a maximum heat input capacity of equal to or greater than 100 MMBTU/hr and firing liquid fuel as 0.25 lb/mmBTU heat input; the NO_x emission rate from this process is 0.20 lb/mmBTU. The Department believes this low emission rate is attributable to the fuel being combusted (i.e., liquid sulfur), the relatively low combustion temperature (i.e., 1,700 to 2,000 °F) and the NO_x absorption in the ISA itself. Because of this information, and considering the Company's economic analysis that add-on NO_x removal technology is not cost effective, the Department agrees with General Chemical that the current status of the process is RACT.

RACT Applicable Requirements

The Department imposes no additional applicable requirements on the Sulfuric Acid Process and Interstage Absorption System under Regulation No. 12 of Delaware's "Regulations Governing the Control of Air Pollution."

General Chemical Corporation
6300 Philadelphia Pike
Claymont, DE 19703

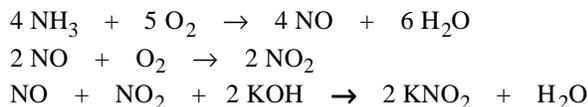
Metallic Nitrite Process
with Caustic Scrubber

Regulated Pollutants Affected:

This determination only pertains to the regulation of the ozone precursor, nitrogen oxides (NO_x).

Process Description

This process is a batch process that produces potassium nitrite (50% solution). The process involves reacting a controlled mixture of air and ammonia over a catalyst. The catalyst converts the air-ammonia mixture into nitric oxide, nitrogen dioxide, and water vapor. This mixture is absorbed into potassium hydroxide circulating through an absorbing tower to form potassium nitrite. The reactions are as follows:



The potassium nitrite solution is stored, filtered, and used to make crystal.

NO_x Emission Information

NO_x emissions are generated in the reaction of the air/

ammonia mixture over a catalyst.

Based on a 1982 stack test, General Chemical estimates the maximum controlled NO_x emission rate is 10 lb/hr and the potential to emit NO_x is 43.8 tons per year.

The metallic nitrite process is in and of itself a major NO_x emitting source, and is subject to the requirements of Regulation No. 12.

RACT Analysis

Control of NO_x from this process is by two means: 1) process control, and 2) operation of a counter flow packed column scrubber.

Process Control:

The rate that NO_x forms is proportional to the rate of the air/ammonia mixture fed to the process. Early in the batch when the free alkalinity in the absorption tray tower is high, the majority of the NO_x formed is absorbed by the process in the absorption tray tower. As the batch progresses, the free alkalinity in the tray tower liquid decreases, and the NO_x feed rate to the scrubber increases. Towards the end of each batch the free alkalinity in the absorption tray tower is near zero, and practically all of the NO_x generated passes through to the scrubber. Because of this, the NO_x inlet rate to the process (i.e., the air/ammonia mixture feed rate) is a particular concern.

The Department has determined that control of the air/ammonia feed rate(s) to the process is a necessary part of NO_x RACT for this process.

Scrubber:

The process off-gas treatment system incorporates a single stage packed tower scrubber which uses KOH as a scrubbing liquor. In the scrubber the KOH effectively reacts with the residual NO_x in the exhaust stream to form KNO₂ and KNO₃. Note that the use of KOH as a scrubber liquor in this process overcomes the problem of disposal of the alkali nitric salts that other facilities might experience using this technology, since the liquor is used as feed for the next batch.

The Department has determined that operation of the KOH scrubber, to include monitoring and control of the free alkalinity in the scrubber liquor is a necessary part of NO_x RACT for this process.

As indicated above, the Department has determined that both the control of air/ammonia feed rate(s) to the process and the operation of a single stage packed tower scrubber which uses KOH as a scrubbing liquor constitute NO_x RACT for this process.

RACT Applicable Requirements**Operational Limits**

A. All emissions to the atmosphere from the metallic nitrite process shall pass through a KOH scrubber that is operated and maintained in accordance with the manufacturer's specifications and in accordance with good air pollution control practices.

B. The free alkalinity of the scrubber liquor shall not fall below a level(s) established in accordance with good air pollution control practices, accepted by the Department and made federally enforceable.

C. The pressure drop across the scrubber shall not fall outside of a range established in accordance with good air pollution control practices, accepted by the Department, and made federally enforceable.

D. The air/ammonia feed rate to the process shall not exceed a rate(s) established in accordance with good air pollution control practices, accepted by the Department, and made federally enforceable. In implementing this provision separate feed rate(s) may be established for distinct phases of the process, for example, one rate may be established for all times except those times when the free alkalinity in the absorption tray tower falls below some value, at which time a lower rate may apply.

E. There shall be no visible emissions from the scrubber outlet.

Compliance Method

Compliance with the visible emission limitation shall be determined by methods accepted by the Department and made Federally enforceable. Compliance with all other operational limitations shall be demonstrated based monitoring and record keeping requirements.

Monitoring

A. The free alkalinity of the scrubber liquor shall be determined on a frequency established in accordance with good air pollution control practices, accepted by the Department, and made federally enforceable.

B. The Company shall install and maintain a gauge that indicates the pressure drop across the scrubber.

C. The air/ammonia feed rate to the process shall be continuously monitored at all times the metallic nitrite process operates.

D. The free alkalinity in the absorption tower liquor shall be determined on a frequency established in accordance with good air pollution control practices, accepted by the Department, and made federally enforceable.

E. The scrubber system exhaust stack shall be

observed for visible emissions pursuant to a schedule accepted by the Department and made federally enforceable. Such observations shall be conducted towards the end of any batch when possible.

Testing

A. Inspect the NO_x scrubber, scrubber packing and spray nozzles, pursuant to the manufacturer's recommendation, but not less than annually.

B. Calibrate pursuant to the manufacturer's recommendations, but not less than annually, the differential pressure gauge.

Record Keeping

A. The Company shall maintain records of all measurements of the free alkalinity of the scrubber liquor and of the free alkalinity of the liquor in the absorption tower.

B. At least once each day that the metallic nitrite process operates, the Company shall maintain records of the differential pressure across the scrubber.

C. The Company shall continuously record the air/ammonia feed rate to the process at all times the metallic nitrite process operates.

D. The Company shall maintain a log of all visible emissions observations made, to include the date, time, and results of each observation.

E. The Company shall maintain records of any scheduled or non-scheduled maintenance and calibration data for the scrubber, or the differential pressure gauge.

Reporting

No reporting requirements beyond those of Regulation No. 30 are being imposed on this process under Regulation No. 12.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

The Delaware Joint Practice Committee in accordance with 24 **Del.C.** Subsection 1906(19) has proposed to revise the Rules and Regulations governing Independent Practice/Prescriptive Authority for Advanced Practice Nurses (APN).

The proposed changes that mandate completion of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty and advanced patho-physiology, in addition to advanced pharmacology/pharmacotherapeutics mirror recently established national standards for advanced practice nurses who prescribe. In addition, proposed language has been added that differentiates between the APN who has never had prescriptive authority and one who has had the authority in another state. The proposed revision decreases continuing the pharmacology education requirement from fifteen to ten contact hours per two years to mirror the national standard.

A public hearing will be held on Wednesday, July 5, 2000 at 5:30 p.m. in the Conference Center at Delaware Technical and Community College, Stanton Campus, 400 Christiana-Stanton Road, Newark, Delaware.

Anyone desiring a copy of the proposed revised section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover, DE 19904, (302) 739-4522, ext. 215 or 216. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will July 5, 2000.

BOARD OF PODIATRY

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 506(1), the Delaware Board of Podiatry proposes to revise its rules and regulations. Please note that the following rules and regulations are a total rewriting and reordering of existing regulations to implement and clarify the Board's authorizing law, 24 **Del.C.** Chapter 5, as revised and adopted on July 20, 1999, and these rules will supersede and replace any previously adopted rules and regulations of the Board. Substantive changes to the regulations include changes in and clarification of the Preceptorship program; clarification of examination requirements and criteria for reciprocity; clarification of inactive status requirements; allowance for certain computer, television or video based continuing education programs and certain self-directed continuing

education activities; deletion of provisions pertaining to matters governed by other Acts and Statutes (e.g. disciplinary hearings); and establishing procedural rules pertaining to disciplinary matters and hearings before the Board. In addition, material which unnecessarily duplicates the statutes or other rules and regulations has been stricken. The rules and regulations have been entirely re-ordered and re-numbered.

A public hearing will be held on the proposed Rules and Regulations on Monday, July 10, 2000 at 6:00 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Dana Spruill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Dana Spruill at the above address or by calling (302) 739-4522, extension 205.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

REAL ESTATE COMMISSION

The Delaware Real Estate Commission, in accordance with 24 **Del.C.** §2905(a)(1) and 29 **Del.C.** §10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on August 10, 2000 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

The Commission shall receive input in writing or by oral testimony from interested persons regarding the following revision of the Rules and Regulations: Rule 5.2. (Escrow Accounts). Add sentence specifying that a licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

The final date for interested persons to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral or written comments or who would like a copy of the proposed change may contact the Commission office at 302-739-4522, extension 219, or write to the Delaware Real Estate Commission, 861 Silver Lake Boulevard Suite 203, Dover, DE 19904-2467.

GAMING CONTROL BOARD

The Board proposes a new section 1.03(10) to the existing Bingo Regulations. The amendment would require the bingo applicant to provide full and fair description of the prize to be awarded and appraised value of the prize. The amendment would also permit the Board to require an independent appraisal of the prize.

Copies of the existing Bingo Regulations and the proposed regulation as amended are attached. The public may obtain copies of the proposed regulations from the Delaware Gaming Control Board, Division of Professional Regulation, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE 19904. The contact person at the Board is Denise Spear and she can be contacted at (302) 739-4522 ext. 202. The Board will accept written comments from the public beginning June 1, 2000 until July 5, 2000. Written comments can be sent to the Delaware Gaming Control Board, Division of Professional Regulation, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE 19904. A public hearing will be held at the Delaware Gaming Control Board, 2nd Floor Conference Room, Cannon Building, Suite #203, 861 Silver Lake Blvd., Dover, DE on July 6, 2000 at 12:00 p.m. The public may present comments at the public hearing.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, June 15, 2000 at 2:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF FINANCE
DIVISION OF REVENUE****PROPOSED TECHNICAL INFORMATION
MEMORANDUM 2000-2**

DATE: May 15, 2000
SUBJECT: DUTY TO REPORT SALES OF
CIGARETTE PRODUCTS MADE BY
NON PARTICIPATING
MANUFACTURERS

AUTHORITY: These regulations are proposed pursuant to the authority given the Department of Finance in 29 Del. C. § 6081(j).

COMMENTS: Public Comments will be received for 30 days from the date of the issuance of this proposed regulation and they may be submitted to Jos. Patrick Hurley Jr., Division of Revenue, 820 N. French Street, Wilmington, DE 19801. Telephone (302) 577-8685.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION****TITLE OF THE REGULATIONS:**

Regulation No. 30, Title V State Operating Permits Program.

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE
AND ISSUES:**

The Department is proposing to revise Regulation No. 30 to correct deficiencies identified by the EPA in a December 4, 1995 Federal Register notice (60 FR 62032).

NOTICE OF PUBLIC COMMENT:

A public hearing will be held on these proposed revisions to Regulation No. 30 on June 26, 2000 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, DE. Comments on this proposal may either be made at the hearing, or submitted to the Department in writing not later than the close of business, June 30, 2000.

PREPARED BY:

Ronald A. Amirikian/(302)323-4542

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION****TITLE OF THE REGULATIONS:**

Case-by-Case Nitrogen Oxides (NO_x) Reasonably Available Control Technology (RACT) Determinations

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE
AND ISSUES:**

The Department is proposing to submit to the EPA for inclusion in the Delaware State Implementation Plan (SIP) four Case-by-Case NO_x RACT determinations. These determinations have been made pursuant to Regulation No. 12, NO_x RACT, of the State of Delaware "Regulations Governing the Control of Air Pollution." SPI Polyols, Inc.,

CitiSteel, and General Chemical Corporation are affected by these determinations.

NOTICE OF PUBLIC COMMENT:

A public hearing will be held on these determinations on June 21, 2000 beginning at 6:00 p.m. in the Department's facility located at 715 Grantham Lane, New Castle Delaware. Comments may be made at the hearing, or submitted to the Department in writing not later than the close of business, June 30, 2000.

PREPARED BY:

Ronald A. Amirikian/(302)323-4542

**DELAWARE RIVER BASIN
COMMISSION**

P.O. Box 7360 West Trenton

The Delaware River Basin Commission will meet on Friday, June 16, 2000, in Deposit, New York. For more information contact Pamela M. Bush at (609) 883-9500 extention 203.

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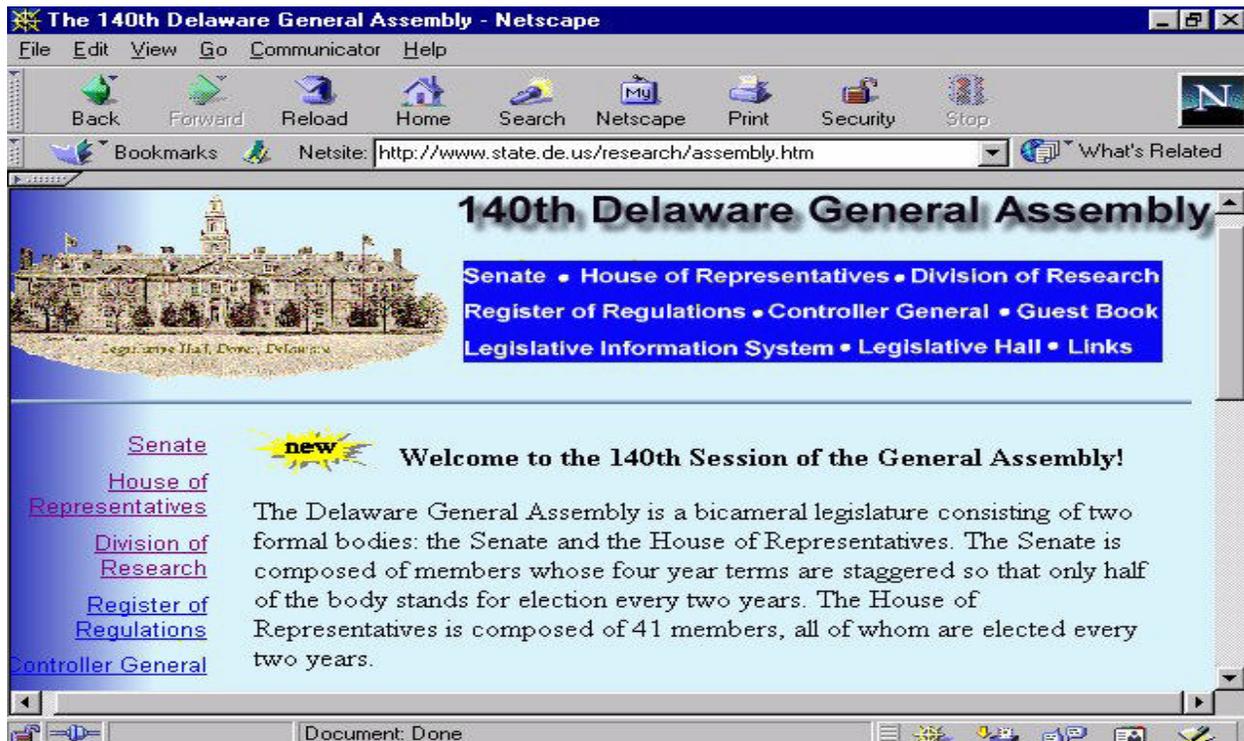
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